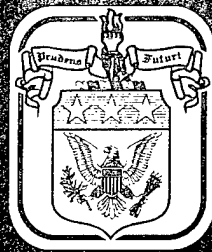


# PARAMETERS



US ARMY  
WAR COLLEGE  
QUARTERLY

VOL. XXXII, NO. 1

SPRING 2002

## ***Book Reviews***

Russell Weigley considers *April 1865: The Month that Saved America*,  
Richard G. Trefry looks at *Yanks: The Epic Story of the American Army in World War I*,  
Williamson Murray reviews *After Clausewitz, German Military Thinkers Before the Great War*,  
and many more . . .

## ***Review Essay***

Russell W. Ramsey, "War and its Aftermath: New Writing on Latin America"

- Thinking Asymmetrically in Times of Terror . . . . . Colin S. Gray
- The Moral Limits of Strategic Attack. . . . . Michael A. Carlino
- The Law and War in the 21st Century*
- New Options for Prosecuting War Criminals  
    in Internal Armed Conflicts . . . . . Geoffrey S. Corn and Jan E. Aldykiewicz
- Modern War, Modern Law, and Army Doctrine:  
    Are We in Step for the 21st Century? . . . . . Richard J. Butler
- Posse Comitatus and Nuclear Terrorism. . . . . Chris Quillen
- Organizing for Homeland Security. . . . . Michael J. Hillyard
- Principles of War on the Network-Centric Battlefield:  
    Mass and Economy of Force . . . . . Paul Murdock
- Macedonia: End of the Beginning  
    or Beginning of the End?. . . . . P. H. Liotta and Cindy R. Jebb

"NOT TO PROMOTE WAR, BUT TO PRESERVE PEACE . . ."

# US ARMY WAR COLLEGE

Thomas E. White, *Secretary of the Army*  
Major General Robert R. Ivany, *Commandant*

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## PARAMETERS

*The US Army's Senior Professional Journal*

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*Parameters*, a refereed journal of ideas and issues, provides a forum for the expression of mature professional thought on the art and science of land warfare, joint and combined matters, national and international security affairs, military strategy, military leadership and management, military history, military ethics, and other topics of significant and current interest to the US Army and Department of Defense. It serves as a vehicle for continuing the education and professional development of USAWC graduates and other senior military officers, as well as members of government and academia concerned with national security affairs.

## *From the Editor*

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### *In This Issue . . .*

Colin Gray examines the character of asymmetric threats and cautions that traditional attempts to define such threats have generally been unproductive. As a consequence, he observes, "A problem with efforts to define an asymmetric threat is that they imply strongly that the universe of threats divides neatly into the symmetric and the asymmetric." Such attempts he adroitly counters are "nonsensical" at best. The author provides eight basic characteristics of asymmetry. He then applies each in the context of terrorism to determine how the United States should react tactically, operationally, and strategically. He cautions American military planners not to become overly focused on asymmetry, thereby ignoring other legitimate threats.

Michael Carlino suggests that as a result of Operation Desert Storm the US military has come to the conclusion that it is no longer necessary to accept heavy casualties to obtain victory. More specifically, the author believes we have translated this increased desire for "casualty avoidance" into a mantra inviting an increase in noncombatant losses. How far should military planners and commanders go to resolve the dichotomy between force protection and noncombatant immunity? Carlino asserts that a combatant's right to life is forfeited when he engages with the enemy. Both have the moral right to kill their foe. However, it is when one considers a noncombatant's right to "immunity" that the relationship between force protection and noncombatant safety becomes problematic. The author draws on the works of Michael Walzer and others to conclude that military and political leaders must abandon their "zero-casualty mentality" and de-emphasize force protection if it means increased risk to noncombatants.

Geoffrey S. Corn and Jan E. Aldykiewicz introduce the first of three articles related to law and war in the 21st century with their treatise suggesting that violators of international law be tried in US military courts. The authors draw on the precedent of the Second World War and Nuremberg to explain the evolution of a doctrine of individual criminal responsibility for violations of the laws of war. They explain that in the past this doctrine was limited to acts committed during state-on-state conflicts; only recently has it been applied to civil wars and internal armed conflicts. The authors review a series of precedent-setting cases under the jurisdiction of the International Criminal Court to determine that recent developments in the law of war make the use of US courts-martial another potential venue for prosecuting individuals who commit war crimes during internal conflicts.

Richard Butler identifies disconnects between current US Army doctrine and the decisions by international tribunals conducting prosecutions under the legal precedent of "unlawful attack." This precedent focuses on military commanders conducting operations that affect the surrounding civilian population.



The author postulates that although there have been no prosecutions of US commanders under this doctrine, it is clear that there are increasing expectations by the international community that military commanders be held to a higher standard when making decisions related to ground operations and target selection.

Our final article related to "The Law and War in the 21st Century" is Chris Quillen's disturbing look at the role the Department of Defense can legally play in countering domestic terrorism. Quillen believes that the fundamental limitations placed on the military by the Posse Comitatus Act of 1878 are being eroded by presidential and congressional desires "to do something" in times of danger. The author uses the threat of nuclear terror to highlight that the involvement of the military in traditional law enforcement roles is not only violating the intent of the act, it is weakening the very principles essential to the maintenance of our American constitutional system. Quillen suggests that instead of changing the current Posse Comitatus law, the nation would be better served by the expansion of structures already in existence within specific national agencies. Such an expansion would require these agencies (FBI and DOE) to agree that a threat is of such magnitude that the Department of Defense should be brought in. The author concludes that this expansion of existing authority, once vetted by the courts, would eliminate current legal restrictions upon DOD and still address genuine concerns about the Defense Department's role in domestic affairs.

Michael J. Hillyard examines how the corporate world and government organize to address specific missions, products, or services provided. Hillyard points out that understanding the distinctions between such institutions is critical to determining the optimal structure for homeland security. How should we organize our many institutions and national capabilities to protect and secure the American people and our way of life? What is the best method for institutionalizing the security of the homeland? The answers to these questions and many others provide the reader with insights into the difficulties associated with organizing such a multifaceted institution. Hillyard proposes a structure organized around the federal bureaucracy, reinforced by a national network of hubs, and integrated across the whole of America. The author warns that we should act now and not be dissuaded by the old myth that it takes decades for institutions within the federal structure to evolve.

Paul Murdock analyzes two of the most misunderstood principles of war—mass and economy of force—to provide the reader with an insightful and illustrative article outlining the capabilities required for success on the network-centric battlefield. The author draws upon the works and deeds of such great commanders and strategists as Liddell Hart, Sherman, MacArthur, and others, to arrive at the conclusion, "Decisions pertaining to the strength of forces are not about frugality; they are about balance, effectiveness, and calculated risk."

P. H. Liotta and Cindy Jebb warn that in the aftermath of 11 September 2001 the world should not lose sight of events in the Balkans, specifically, Macedonia. The fact that the Balkans no longer constitute a primary foreign

policy challenge does not mean that the international community can ignore Southeast Europe. The authors argue that Macedonia's future is important to the entire European security architecture. Following a detailed and instructive history of Macedonia and its people, the authors offer several observations designed to successfully guide Macedonia into the 21st century. Europeanization, to include membership in the European Union, is key if Macedonia is to survive. Liotta and Jebb conclude that the fate of Macedonia is in the hands of "external" forces; they can not do it alone.

*Book Reviews* present a rich and diverse array of offerings, including Russell F. Weigley's review of Jay Winik's *April 1865: The Month That Saved America*; Richard G. Trefry's look at the latest work of John S. D. Eisenhower and Joanne Thompson Eisenhower, *Yanks: The Epic Story of the American Army in World War I*; and Williamson Murray's insightful review of *After Clausewitz, German Military Thinkers Before the Great War*, by Antulio J. Echevarria. Other reviews of note are William P. Kiehl's review of *Empire and Revolution: The United States and the Third World since 1945*, Peter L. Hahn and Mary Ann Heiss, editors; Douglas P. Yurovich's analysis of Gian B. Gentile's *How Effective Is Strategic Bombing? Lessons Learned from World War II to Kosovo*; and William J. Gregor's views on Christopher Sanders' *America's Overseas Garrisons: The Leasehold Empire*. This is an eclectic collection of reviews, prepared by experts with the intent to inform and advise anyone with a particular interest.

### ***Distribution Surveys . . .***

We appreciate the assistance of our readers in the successful execution of two recent distribution surveys. The first entailed a massive mailout of cards last fall, and the second was an email survey of current Department of Distance Education students this past January. Your response to the surveys permitted us to update our database and meet recurring postal requirements, and will result in savings in printing and postage costs in the tens-of-thousands of dollars. As with any undertaking of this magnitude we experienced a few minor glitches along the way, and we apologize for any inconvenience this may have caused. Finally, I wish to express the sincere appreciation of the entire *Parameters* staff for the many compliments you so generously volunteered.

### ***Taps . . .***

It is again my sad duty to say farewell to a fellow soldier and editor. Colonel Alfred J. Mock, USA Ret., passed away on 7 January 2002. Al was editor of *Parameters* from November 1973 until May 1976. He entered the Army during World War II and later served in both the Korean conflict and Vietnam. Following his retirement from the US Army War College in 1976, he taught journalism and public relations at a local university. To Kathleen, his loving wife of 42 years, the entire Mock family, and to all of Al's many friends, you have our deepest sympathy. "Wherever Al walked, life improved." — RHT □

# Thinking Asymmetrically in Times of Terror

COLIN S. GRAY

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In American common usage today, asymmetric threats are those that our political, strategic, and military cultures regard as unusual. Such threats differ significantly in character both from those that we anticipate facing from putative enemies and from the methods with which we plan to menace them. Much as international lawyers thus far have failed to define terrorism to the general satisfaction, so US national security specialists have found that the endeavor to define asymmetric threats has proved generally unproductive. Borrowing from the terrorism case, the most fruitful approach to the better understanding of asymmetric threats is not via a forlorn quest for the perfect definition, but rather by the identification of the principal characteristics of, and corollaries to, asymmetry.

## *Characteristics of Asymmetry*

A problem with efforts to define an asymmetric threat is that they imply strongly that the universe of threats divides neatly into the symmetric and the asymmetric. Indeed, by definition we can make it so. Of course, this is at best misleading, if not downright nonsensical. Notwithstanding the apparent clarity of some cases, there is no more definitive a universal test for what is an asymmetric threat than there is for who is a terrorist. If one person's terrorist is another's freedom fighter, so one culture's asymmetric threat is another's standard modus operandi. Let us proceed by listing the characteristics of, and usual corollaries to, threats we generally deem to be asymmetric.

Asymmetric threats tend to be:

- Unusual in our eyes.
- Irregular in that they are posed by instruments unrecognized by the long-standing laws of war (which are keyed to control the conduct of regular military machines engaged in open combat).

- Unmatched in our arsenal of capabilities and plans. Such threats may or may not appear truly dangerous, but they will certainly look different from war as we have known it.

- Highly leveraged against our particular assets—military and, probably more often, civil.

- Designed not only to secure leverage against our assets, but also intended to work around, offset, and negate what in other contexts are our strengths.

- Difficult to respond to in kind. This is less true than we usually allow. For example, special forces can be unleashed to operate as “terrorists in uniform.” Unconventional warfare of all kinds, including terrorism (and guerrilla operations), is a politically neutral technique.

- Difficult to respond to in a discriminate and proportionate manner. It is of the nature of asymmetric threats that they are apt to pose a level-of-response dilemma to the victim. The military response readily available tends to be unduly heavy-handed, if not plainly irrelevant, while the policy hunt for the carefully measured and precisely targeted reply all too easily can be ensnared in a lengthy political process which inhibits any real action.

- Friendly to the frightening prospect of the “unknown unknown.” By analogy, if we do not scan the skies, including those of the southern hemisphere, comprehensively and routinely, we will probably not spot the asteroid (or other “Near Earth Object”) that poses the ultimate asymmetric menace to our security. But even a superior defense community is going to miss some “unknown unknowns.” We do not look for what we do not know to look for.

Undoubtedly some works of frontier social scientific scholarship one day will dissect the concept of the asymmetric threat and argue that it has N categories, Y subcategories, and who knows how many intriguing, and not wholly implausible, variations. To be useful to US policy, however, an understanding of asymmetric threats should focus only upon the core of the matter. In addition to the eight broad and overlapping characteristics itemized above, it is only a special class of asymmetric menace that need attract official US concern today. Specifically, the United States is interested not simply in threats that are unusual, different, or designed to evade American strengths. Instead, the United States has to focus on threats, which in this case happen to warrant description as asymmetrical, that if executed could wreak great damage upon American interests. In other

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words, it is not sufficient just for a threat to be different, also it would need to be prospectively effective. Many candidate asymmetric threats are not threats to achieve a measure of physical control, but rather work ju-jitsu fashion with the inadvertent cooperation of the victim. It follows that the effectiveness of those threats is not some absolute quality and quantity, but is very much ours to determine. This points to a general truth about the strategic utility of terrorism in particular, with the same rule applying to perpetrator and victim.

Typically, terrorists win when their outrages, though generally very minor as compared to the extraordinary events of 11 September or the kind of costs inflicted by regular warfare, induce the state-victim to overreact. The regular belligerent takes action which fatally imperils its own political legitimacy. Similarly, terrorists lose when their outrages delegitimize their political cause; this is what can be termed the mainstream strategic explanation of why terrorism succeeds or fails in particular cases. It is all but impossible for terrorist organizations themselves to inflict truly major physical damage upon the *capabilities* of states. For the parallel point, it is close to impossible for the forces of counterterrorism to root out all of the would-be warriors-by-terror. Each side usually has to be encouraged to defeat itself politically. The historical record on these points is quite clear—indeed, is overwhelming—though it is less well understood than it should be.

Lest there be any misunderstanding, I am not suggesting that the “regular” state party to an asymmetrical conflict should tolerate terrorist outrages. Underreaction, let alone no reaction, most likely would be interpreted as weakness, perhaps as evidence of successful intimidation. Nonetheless, when dealing with terrorists, a low-key response usually is preferable to heavy-handed action which both dignifies the enemy by signalling a large significance to his misdeeds and risks alienating political opinion. Though the attitudes and policies of most irregularly asymmetric foes will be accessible by carefully crafted threats and bribes, usually there is a hard core among the adversary whose mode of rationality literally will brook no compromise. In those instances, the rejectionists (of any compromise whatsoever) either have to be killed or placed in permanent detention. Ideally, the messy task of dealing with the hardest of hard-core among irregular enemies can be left to their former comrades-in-arms (as happened in Ireland, for example, in the early 1920s).

It will be abundantly clear by this juncture that for our current policy and operational purposes the asymmetrical threats of most interest are understood to be militarily, or even quite non-militarily, irregular in character. Nonetheless, we can conceive of asymmetrical threats very different indeed from menaces posed by irregular forces. Most obviously, the United States has to be ready to cope tactically, operationally, and strategically with the smart and unusual employment of regular armed forces by an enemy. Not all of America’s foes, current and future, lack a regular military machine. Tactically, operationally, and strategically adroit belligerents use their regular forces in unexpected ways.

It is not obvious that smart tactics, refined operational artistry, and adroit military strategy warrant the ascription "asymmetric," even though they can manifest themselves in "different" behaviors. Indeed, careful reconsideration of the whole subject area of asymmetric threats, and responses to the same, leads the theorist and the practitioner at least to the working conclusion that good strategy on both sides is what this is all about. Because choices for asymmetric activity merge with common-sense approaches to strategy (e.g., doing what the enemy does not expect, generally practicing the precepts advanced by Sun Tzu), there is virtue in fencing off for distinctive discussion the phenomenon of hugely irregular asymmetric threats. This is not to suggest that asymmetry in conflict is synonymous with belligerency between regular and irregular foes, or between regular and irregular forces (regular security communities can license and employ irregular forces and methods), but that is the core of our current concern. How do asymmetric threats work? To repeat, although we must not equate such threats strictly with terrorism, by and large it is terroristic behavior that is the focus here.

- *Asymmetric threats work by defeating our strategic imagination.*

Every security community is the prisoner of its own strategic expectations. Recall that efforts at strategic deception tend to work when they show enemies what they expect to see. Our historical experience, culture, and geopolitical context, as well as the practical constraints of government (limited information, time, money, flexibility), direct us to prepare for some contingencies, but not others. We prepare against threats that our community agrees consensually merit contingent responses. It may be unjust, certainly strictly inaccurate, to identify failure of imagination as the strategic culprit, when really the problem reduces to knowing how to act in face of the full array of imaginative possibilities. More often than not, the difficulty lies not so much in a failure of imagination—someone will have thought of the threat at issue—but rather in an understandable failure of confidence in imaginative threat identification.

Experience suggests powerfully that the US defense community, with its hundreds of planning staffs, study groups, and respected theorists, has little difficulty imagining dire asymmetric threats (e.g., to the twin towers in New York City, a target previously assaulted unsuccessfully). The problem lies in locating decision rules to filter threats worthy of serious attention from the rest. Even the wealthiest country on Earth cannot afford to invest in protection against all conceivable threats.

- *Asymmetric threats work by posing possible menaces so awful and awesome that countries dare not respond, at least not until actual experience provides incontrovertible evidence of the threat.*

It is well worth remembering that the asymmetric danger leveled by terrorism can work strategically only with the unwitting cooperation of the victims. If we permit acts of terror to spread fear, despondency, and drive us into a variant of a garrison state, then at best we accept a very high price as the cost of living with this asymmetric foe. At worst, and this is the strategic logic of the

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***“It is not sufficient for American responses to asymmetric threats to be effective; in addition, they must be politically and morally tolerable.”***

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terrorist, we find the responses we have initiated to counter terrorism so burdensome that we become discouraged and amenable to effecting a political deal (always assuming, of course, that our asymmetric foe is “dealable,” which he may not be). Note that the (Provisional) IRA has bombed and shot its political wing, Sinn Féin, into government in Northern Ireland. While, for the least ambiguous, if in the long term historically ironic, example, Jewish terrorists bombed and shot the state of Israel into existence, as they rendered Britain’s mandate over Palestine unsustainably costly.

Because most imagined threats do not occur, it follows that most of them can be safely ignored. Of course, it can be difficult to know with high assurance which threats can be ignored with impunity, and which cannot. Such “acts of God” as giant tsunamis (e.g., triggered by the collapse of a mountainside in the Canary Islands) or collision with a Near Earth Object, tend to be classified in official and popular minds along with mass bio-terrorism and even nuclear missile strikes, as events so awful as to be all but beyond prudent policy response. Apart from the obvious danger of public panic, which may be gratuitous (since nothing can be truly certain until it happens), the difficulty and cost of suitable anticipatory responses are self-detering. Even when the asymmetric threat approaches both high plausibility and amenability to a fairly reliable solution—as, for example, with the menace of rogue missile attacks—government and public are likely to opt for the non-response of psychological denial. After all, it may never happen.

- *Asymmetric threats work by challenging successfully our ability to respond effectively.*

By its nature the executive agency for asymmetric threats, and possibly the political force behind that instrument, will be dissimilar to us. Ideally, from his point of view, the purveyor of asymmetric threats does not leave a business card with an address at the scene of the crime. The highly irregular warriors of asymmetry can succeed tactically only in the mercifully rare cases when they are indifferent to personal survival, or when they can merge anonymously into the urban human mass or into forbidding physical terrain. Since strategy is not solitaire, even a country as powerful as the United States requires that its enemies have map coordinates as a necessary condition for chastisement. Although irregular foes generally can function only with the willing or coerced acquies-

cence of host polities; it is by no means an elementary matter for the United States to drain those particular swamps, as the popular pejorative expression has it.

Among other difficulties: the state-swamps at issue are inhabited by many people deemed to be innocent; they will have civilizational affiliates elsewhere, some of whose official and popular opinion we will need to take seriously; and operational problems most likely would make a mockery of robust intentions and muscular language (e.g., draining the swamp) on our part. It is not sufficient for American responses to asymmetric threats to be effective; in addition, they must be politically and morally tolerable in our culture. The Roman Republic and Empire devised and practiced exceedingly brutal standard operating procedures against irregular foes, domestic and foreign, that were extremely effective. Those procedures could not be followed today by our society in the contexts of the laws of war (as revised, to accommodate internal strife) and the CNN factor.

Americans will need to decide whether asymmetric foes are criminals or enemy soldiers. If we redefine what the concept and legal idea of “war” encompasses, then so also will we have to redefine who can wage it legitimately, which is to say who, and what kinds of behavior, enjoy some legal recognition and protection. In addition, there will have to be reconsideration of the precise meaning of a distinction that has been fundamental to the development of the laws of war, that between combatants and noncombatants (“innocents”). At present the civilized world is trapped somewhat in a timewarp of arguably obsolescent political, ethical, and strategic assumptions and practices. Had three thousand Americans been killed on 11 September 2001 in a regular attack by the conventional forces of a state-enemy, the US response would have been swift and bloody indeed. Given the terrorist nature of the attack, the US defense community had to adjust to an unfamiliar strategic context. There is a considerable danger that today’s new (sometimes asymmetric) menaces will be addressed by thoughtways and operating procedures of unduly conventional character.

- *Asymmetric threats work by acting against what appear to be our strengths.*

Bearing in mind the restricted domain allowed asymmetric threats in this discussion—confined largely to the terroristic outrages committed by the physically relatively very weak—it is the symbols, the apparent exemplars, of our strength that must attract the hostile strategist of asymmetry. In comparatively minor key, the attack on USS *Cole* in November 2000, and in truly major key, the assaults on the World Trade Center and the Pentagon, both illustrate our argument all too clearly. Notwithstanding even horrific scenarios, the Osama Bin Ladens of this era cannot wreck US global military or financial hegemony, or the political context which lends a widespread legitimacy to that preeminence—only ill-judged US policy itself can do that. But the asymmetric threat posed by expressive acts of terror can occasionally succeed in inflicting damage on a scale and of a kind that could be truly damaging to US political prestige in the world.



While US policy and operations must seek to prevent and, if need be, thwart, acts of terror, the impracticality of achieving permanent 100-percent protection (of what?) suggests the wisdom in a policy which scores well at political damage limitation. Given the very restricted physical damage that most asymmetric threats could pose (weapons of mass destruction generally are another matter), we have to think innovatively about ways to minimize loss of prestige when such outrages succeed tactically (as they will, from time to time).

Fortunately, our problem is noticeably strategic in form. The Osama Bin Ladens are not literally madmen. They are highly intelligent, resourceful, and bent upon acting in ways that, in their reasoning, will have beneficial effects. If we are to perform competently in deterrence we need to address empathetically the issue of how, by our policies, we can negate the political effects of tactically successful terrorism.

### ***Some Working Propositions***

Let us now turn to how we can best prepare for and shape our responses to these threats.

- *We cannot predict specific asymmetric threats (unless we have excellent intelligence) and therefore we cannot protect everything at risk.*

What this means is that, as in any war, the friendly side will take losses. While the United States should do all that it can, consistent with maintenance of decent standards of behavior, to make life difficult for would-be terrorists, this character of asymmetric conflict is peculiarly unrewarding to careful defense. The reason should be obvious. Simply stated, we and our friends and allies offer too many targets around the world for preclusive protection to be anything other than a worthy policy goal. Deterrence will be especially important, despite the likely fact that it will be unusually (culturally) difficult to achieve. A confident assumption that Americans are very good at deterrence—witness the course and outcome of the Cold War—needs to be jettisoned forthwith. We are urgently in need of culturally sophisticated profiles of asymmetric foes, so that we may stand some chance of understanding what might best discourage them from proceeding.

- *We tend to lock onto yesterday's event and project it forward as the menace of the era.*

It is of the essence of the irregular, asymmetric threat that it will not comprise a replay of yesterday's outrage (though the World Trade Center was attacked more than once). We must not give the impression that we believe that our asymmetric enemies always will be successfully cunning and proficient. From time to time they will succumb to unduly routinized, "regular," and conventional thinking, they will behave incompetently, and "friction" of several kinds can thwart them. All of which is both true and somewhat comforting to recognize, but alas it cannot serve as the basis of our policy. Bureaucracies—military and civilian—and indeed any hierarchical organization which rewards rule-following, are inherently ill-suited to think innovatively about asymmetric threats. The US

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***“Americans will need to decide whether  
asymmetric foes are criminals  
or enemy soldiers.”***

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armed forces have handfuls (no more) of people amongst their substantial special operations forces who truly can think “outside the box,” and who can reason and, if need be, behave like “terrorists in uniform.” It is not likely that even an elite group of US officials blessed with relatively unconventional mindsets would offer much of value with respect to specific asymmetric threat-spotting; there are just too many possibilities out there. But at the least such a group should be able to frame an intelligent generic strategy for response, and therefore deterrence.

- *Although we are not likely to perform well at the identification of very specific dangers, we should be able to identify, and therefore plan how to protect against, the kind of threats that would do us major harm.*

This thought really is complementary to the merit in the idea of trying to access the enemy’s culture. Since his exact operational choices are likely to remain a mystery to us, we at least should know what we value most, and take measures to afford such protection as is feasible. The lore on sound principles for the guidance of defense planning includes the injunction not to avoid being surprised, but rather to avoid serious damage from the effects of surprise. The more one thinks about the problems of coping with asymmetric threats, the more relevant do traditional, historically founded approaches to defense planning appear to be.

- *We need to be especially alert to the possibility that asymmetric threats can wreak their greatest damage through ill-judged measures of response that we ourselves choose to undertake.*

While we do need to worry about, and plan to prevent, the damage that asymmetric threats might cause, we have to be particularly alert to the danger that relatively minor physical damage inflicted by terrorists may be translated—by us—into truly major societal and economic costs as we dignify the asymmetric belligerent by overreacting. If decisive action against asymmetric threats is possible, ideally after the fashion of defeating piracy by burning out the pirates’ lairs, all to the good. However, the challenge to US policy lies not so much in those cases where there is a military option, but rather when there is not. The temptation to do something, for the sake of being seen to be doing something—even something strategically stupid—can be politically irresistible.

One should not forget a basic rule outlined above: the terrorist (as an asymmetric opponent) can succeed only with our assistance. He lacks the

resources himself to inflict significant direct damage upon us. Even if armed with weapons of mass destruction (WMD), the scale of the terroristic asymmetric menace is but a pale shadow of the damage that the superpowers might have inflicted in a World War III. This is not to suggest that terrorists with WMD are insignificant—far from it. But it is to say that we need to keep a sense of proportion. There may be a great Sino-American struggle in our future, a possible conflict which, in its potential for harm, would demote today's roguish terroristic perils to the second-order problems that they are, historically. Less than 20 years ago we faced some danger of a war wherein casualties easily could have numbered in the many millions. Without diminishing the tragic loss of three thousand lives, it cannot be strategically sound for America to allow itself to be permanently traumatized by such an outrage, or consequently to recast its national security policy on a grand scale.

- *We need to identify and think hard about threats to which we lack obvious responses.*

In effect, this point advises asymmetric, even unconventionally irregular, approaches on our part. We have to learn to respond differently, but effectively, to threats which cannot be answered in kind. The United States has to ask imaginatively what it is that its asymmetric foes value highly, and devise ways and prepare means to hurt those values severely. If there are cultural barriers on our side to incorporating particularly murderous options into our policy, strategy, or operational intent, then we may need to reconsider some of our attitudes and rules of engagement. After all, war is war. Combat against terroristically asymmetric foes is likely to be about as far removed from the "clean" conditions of, say, war at sea or in the desert (where there are no civilians) as can be imagined.

### ***A Skeptical End-Note***

In the history of strategic ideas, the contemporary American fascination with asymmetry comprises rediscovery of the stunningly obvious. To behave in ways different from those expected by an enemy can be simply good tactics, operational art, and strategy. Since asymmetrical merely means different, it is a little hard to understand quite why the notion has been elevated as the latest fashionable Big Idea (following on from the concept of a revolution in military affairs). In this essay I have confined asymmetrical threats to those emanating from an irregular foe. However, with equal, if not greater, justification I might have set out to diminish this Big Idea by pointing out that all of America's wars have been asymmetrical contests. Even aside from the bloody, two and a half century-long experience of struggle against native American irregulars, when has the country waged a plausibly symmetrical conflict? Imperial Britain was radically different—grand strategically—from the revolting Colonies, as the Confederate States were from the Union, as Germany, Japan, and then the Soviet Union were from the United States in the 20th century.

Defense and war planning always have a significant asymmetrical dimension, which should find expression at every level—tactical, operational, and strategic. Competent tacticians, operational artists, and military strategists are obliged to be aware of salient actual and possible asymmetries. In fact, the quality of being or behaving differently—which is all that asymmetrical means—is so natural to effective defense professionals that they can be excused wondering why the US defense community today is so excited by the concept. Historically assessed, symmetrical warfare has been the rare exception, not the rule. Belligerents always differ from each other, usually in ways that are or could be strategically significant.

It is entirely admirable for the US defense community to recognize the potential importance of asymmetry. This recognition should help offset the peril of indiscriminate strategic autism to which very great powers are prone. A less happy consequence of the current fascination with asymmetry is the imputing of extraordinary efficacy and significance to it. To a greater or lesser degree, *all* tactical, operational, and strategic behavior is asymmetrical. There are no identical belligerents, with identical forces, who behave identically. But to listen in to the current American defense debate is to hear senior officials talking as if they had just discovered extraordinarily dangerous asymmetrical enemies who pose similarly awesome asymmetrical threats. To be different, or to behave differently, is not necessarily to be strategically effective. There is nothing inherently strategically magical about different—i.e., asymmetrical—behavior. There is some excuse for journalists who become overexcited when exposed for the first time to the apparently new Big Idea of asymmetry, but we defense professionals should know better. From the time of its founding, the United States repeatedly has waged war asymmetrally, as it was obliged to do against a series of “different” enemies.

A little reflection reveals that asymmetry essentially is a hollow concept. As a relational variable, that which is asymmetrical can be labeled as such only with reference to that which is symmetrical—and what is that? The concept may have some limited merit if it is corralled, as in this essay, with a carefully specified meaning (focused on an irregular foe favoring terroristic activity). As a contribution to the general lore of strategy, however, asymmetry is a complete non-starter. Given that competent American military planners have always plotted how to defeat particular enemies in the distinctive ways best suited to the individual cases at issue—albeit in ways preferred by American strategic and military culture—what exactly is novel or even especially interesting about the concept of asymmetry? Because all warfare is asymmetrical (there are no sets of identical belligerents), in effect no particular wars or warfare is distinctly so. In this respect, a course of instruction on “asymmetrical warfare” would be content-free.

#### NOTE

An earlier version of this essay was prepared as a contribution to the study of asymmetric threats being led by Dr. Steven Lambakis for the National Institute for Public Policy, Fairfax, Va.

# The Moral Limits of Strategic Attack

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American military operations in the post-Cold War era have been punctuated by a twofold desire for casualty avoidance. The first manifestation is a long-standing feature associated with the conduct of war: the preservation of friendly forces. The success of Operation Desert Storm proved that heavy casualties on one's own forces are not necessary for military victory, and, not surprisingly, that conflict indirectly promoted force protection as paramount in subsequent operations. The other manifestation of casualty avoidance is the reduction of noncombatant losses. Of course, the term encompasses noncombatants residing in or belonging to the enemy state as well as those in one's own country. Although the idea of noncombatant immunity has a lengthy history traceable to the earliest warrior codes, the reduction of noncombatant casualties, particularly those of the enemy, has consistently been overshadowed by claims of military necessity. Arguably, the rise of the modern media, virtually omnipresent, might be credited with helping to renew interest in the protection of noncombatants, since no aspect of conflict now escapes international scrutiny.

Complicating matters is the military's current focus on effects-based targeting and operations, perhaps epitomized in the Air Force's doctrine regarding strategic attack. Rather than focusing on engaging enemy forces directly, current doctrine holds that strategic attack is used to destroy the enemy's centers of gravity, "those characteristics, capabilities, or localities from which a military force derives its freedom of action, physical strength, or will to fight."<sup>1</sup> The idea is usually attributed to the initial architect of the Gulf War's air campaign, Colonel John Warden, who proposed the existence of five rings or centers of gravity, the most important being leadership, followed by organic essentials, infrastructure, population, and finally the actual fighting mechanism, which is portrayed as the least important.<sup>2</sup> This center-of-gravity concept is certainly reminiscent of Sun Tzu's dictum purporting that the acme of skill is to subdue the enemy without fighting, since capturing forces is preferable to engaging in

battle. Hence, attacking the enemy's strategy, not troops, is ultimately what ensures success.<sup>3</sup> However, the nature of the modern battlefield inherently blurs the distinction between combatants and noncombatants; soldiers and civilians are now inextricably woven together in an amorphous battle space, and so the age of segregated battlefields has all but vanished.

The obvious problem is which notion—force protection or noncombatant immunity—ought to have priority and to what extent. Intuition, as well as the current *modus operandi* of the military, might suggest that it is more important for the military leader to preserve the lives of his soldiers even at the cost of greatly increasing the risk to noncombatants, especially when the noncombatant lives in question are not US citizens or allies but rather belong to the enemy state. After all, the prevailing view is that American lives are somehow more important. That view, however, is misguided. A military commander is morally obligated to do as much as he can to preserve the lives of all noncombatants, even if significantly increasing the risk to his own soldiers. This does not necessitate fighting a war devoid of noncombatant casualties—that may well be virtually impossible—nor does it mean that winning is unachievable. Wars can still be fought and won; however, the moral import of noncombatant immunity demands a shift in the current conception of force protection.

### ***Force Protection***

That commanders have a legal duty to protect and ensure the health and welfare of their subordinates during peacetime as well as wartime is incontrovertible. Whether that duty is a moral one is a slightly more open question. Of interest here is not an evaluation of the many plausible arguments that might support such a claim, but the stringency of the moral requirement given that it does exist. This stringency rests upon the resolution of an apparent tension of what has priority for the commander: his mission or his people. Vacuous aphorisms, such as “mission first, people always,” proffered throughout the military, offer no solid counsel. Instead, the answer lies in the analysis of soldiers and their rights.

Soldiers serve in the military fully knowing their lives can be subject to greater risk than their fellow citizens, which might seem obvious in a time of war. Even in peacetime, training with any semblance of realism can, and unfortunately sometimes does, result in harm for those involved. But with the onset of hostilities, soldiers become combatants and are thus imbued with a fundamentally different moral status than noncombatants. The reason for the difference

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involves an exchange of rights between combatants—namely the rights to kill and to be killed.

Soldiers on both sides of a war are willing to fight and die for the defense of what they consider essential values worthy of their lives. An immediate objection might be raised, contending that soldiers actually are motivated into action by a whole host of reasons such as pride, vanity, hate, or fellow feeling, but not necessarily the defense of national values. While indeed true, these interests might be considered immediate or first-order. Most combatants, perhaps mercenaries aside, also have a deeper, second-order interest at stake, which corresponds to the defense of values. For US soldiers, these values include those of the liberal democratic tradition, such as life and liberty. When states decide to enter into hostilities in defense of their respective values, service members operate on a good-faith principle regarding their country's intentions, namely that the intent is the defense of their values. In other words, the moral responsibility of engaging in war is a *jus ad bellum* issue resting squarely with the political authorities of the state—be they authoritarian or democratic in nature—and not with the soldiers prosecuting it. This is not to advocate a carte blanche appeal to invincible ignorance, but instead to assume that in most cases and especially early on, the state's actual reasons for war might be inaccessible to the soldier.<sup>4</sup> Hence, soldiers as a general class can be considered in the absence of *jus ad bellum* concerns.

So though combatants do not choose the wars involving their states, they do fight against what constitutes a legitimate threat to the preservation of their values—the enemy combatants—while fully knowing that the enemy's actions and beliefs essentially mirror their own. Because they have this shared status, combatants also share the moral responsibility for posing an imminent threat to one another. Assuming that combatants have no other recourse but fighting to protect these values, combatants are not only allowed, but in fact are morally obligated, to use force.<sup>5</sup> Thus, combatants on both sides of a war possess moral equivalency because they share the same moral obligation, the defense of their nation's values.

It follows that combatants are not considered criminals for fighting in a war even if they are fighting for the “wrong side,” since they are not responsible for the *jus ad bellum* decision.<sup>6</sup> Soldiers need concern themselves primarily with adherence to the tenets of *jus in bello*, so that in fighting the good fight, they cannot be considered murderers or morally reprehensible for killing in combat. For instance, assume that Iraq was unjust by instigating the Gulf War. While Saddam Hussein might be considered morally responsible and blameworthy for the conflict as the state's political leader, Iraqi soldiers, including those who killed US and coalition soldiers, are not automatically guilty of a crime or moral transgression. To consider soldiers fighting for the “wrong side” as murderers would be grossly counterintuitive and ultimately untenable.<sup>7</sup>

It might seem that the discussion of a soldier gaining “combatant rights” (like the right to kill other combatants) speaks past the commander's moral

obligation to protect his force. However, it has immediate relevance because obtaining combatant rights necessitates the commensurate reduction in the stringency of the combatant's right to life. In other words, the soldier no longer has a stringent claim that he not be killed. After all, combatants have the right to kill their foe, but their foes concurrently have the right to kill them. Thus, these two rights are mutually dependent.

This loss of stringency regarding the combatant's right to life also entails that a combatant is not safeguarded by an absolute prohibition against a commander's decision to jeopardize his life for mission accomplishment. It certainly might be the case that training missions or missions in conflicts concerning non-vital national interests are not worth sacrificing soldiers' lives. However, when the vital interests of a nation are jeopardized and a war is worth engaging in, the mission of preserving these national interests and associated values must logically trump any claim combatants might have regarding their personal safety. Soldiers, especially in the case of a volunteer military, realize this and realize that the sacrifice of their lives might be required—else they would not become soldiers.

This discussion assumes that commanders place their soldiers in peril with good intent and that they act out of concern for accomplishment of a mission related to winning the war and ultimately protecting the values at stake. Commanders who wantonly cause the death of their own soldiers with no aim toward mission success are beyond consideration here. Commanders ordinarily ought to do as much as morality permits to reduce risk and prevent their soldiers from dying unnecessarily. However, sometimes soldiers will die. Commanders whose decisions result in the loss of their subordinates' lives, even excessive loss, are not by rule considered immoral but perhaps only ineffective or unfortunate. Furthermore, combatants ordered to perform missions with the gravest danger are not at liberty to refuse based on concerns of self-preservation. Danger is not a mitigating or exempting circumstance. Such actions are punishable offenses as evidenced by Article 99, "Misbehavior Before the Enemy," in the *Manual for Courts-Martial, United States*.<sup>8</sup> Thus, the commander's duty to minimize the harm that comes to his soldiers in combat is of tremendous pragmatic import, but it is not a stringent moral obligation. Ultimately, mission must come first, and the safety of each individual soldier comes second.

### ***Noncombatant Immunity***

The argument for noncombatant immunity is grounded upon the idea that people possess certain basic rights stemming from their autonomy and moral agency. Exactly what rights belong to this set is debatable, but certainly life and liberty are among them if they exist at all. The discussion in this article will be limited to the former, which, it might be noted, is not a single claim in itself but is rather a cluster-right containing rights, privileges, certain immunities, and claims to noninterference.<sup>9</sup> As such, the right to life is inalienable only in the



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of noncombatant safety is immoral  
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of any legitimate end.”***

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sense that “*others* lack the power to make one cease to have it, and thus . . . one [has] immunity against others in respect of it.”<sup>10</sup>

It follows then that all moral agents possess the inalienable right to life, regardless of whether they are citizens of the United States or an enemy state. This does not mean that a person cannot forfeit the right.<sup>11</sup> As discussed above, voluntary combatants give up at least a part of their right to life—the right not to be killed by other combatants—in order to gain the right to kill. In contrast, noncombatants do not participate in any such exchange, and their right to life remains inalienable and stringent. Given this difference, the noncombatant is not subject to direct attack, being targeted or intentionally harmed by combatants.

Intuition seems to readily support this argument in the consideration of noncombatants considered friendly.<sup>12</sup> US soldiers cannot reasonably believe that they would have the liberty to kill US civilians during a mission, excusing such action as militarily “necessary.” After all, their mission is to protect these people, even when only indirectly. Military personnel realize that this is why they are fighting in the first place, as evidenced by having “selfless service” as one of their core professional values.<sup>13</sup>

Unfortunately, intuition is not as trustworthy with regard to noncombatants perfunctorily considered the enemy. Though these people are not a direct threat to the combatant, their relationship with enemy combatants is seemingly pernicious. However, it is difficult to see how the contingent matter of nationality or geographic location has moral import, and it is untenable to hold that US citizens enjoy moral superiority over foreigners simply because they are American. Any such presumption of moral superiority is groundless. Noncombatants of all nationalities, friendly or enemy, enjoy the same inalienable right to life, which carries the same stringency regarding noninterference.

Hence, a combatant is obligated to respect the rights of all noncombatants. Combatants are morally obligated to respect the stringency of noncombatants’ right to life and must never intend to harm them or use them solely as a means to an end.<sup>14</sup> This obligation is particularly poignant for US soldiers. The values that US soldiers fight for are not simply constrained or applicable to their own citizens but are liberal democratic ideals that apply to all people. The

Constitution rests on this very premise. So, any war involving the United States ultimately centers on the advancement of such ideals; any fight for the United States against a state that is not “well-ordered” is a fight for basic rights—including the right to life—for not only its own citizens but those of the enemy state as well.<sup>15</sup> This is why humanitarian interests are overtly included in the *National Security Strategy*.<sup>16</sup> It follows that it is contradictory to then cause harm to the very people whose right to life the military is obligated to protect.

Some might object to this assertion on the grounds that enemy noncombatants are, after all, the enemy. But such a notion fails to delineate the moral differences between those who prosecute a war and those who only witness it. This is not to say they bear no responsibility for the war, especially if they have the freedom to influence such decisions, as in the case of a democracy. Even so, this hardly constitutes grounds for the cessation of their noncombatant immunity. They are not the threat and cannot be considered legitimate targets.

One should acknowledge that the broad category of noncombatants can and ought to be subdivided, since the picture is not entirely black and white. This discussion so far regarding noncombatants has addressed innocent noncombatants, those with no direct involvement with fighting the war or materially supporting the war effort. There are also “non-innocent noncombatants,” on the other hand: people who, though not engaged in making war, directly support the war effort, the obvious example being workers at munitions or armament factories. In virtue of their activity, non-innocent noncombatants have a less stringent claim not to be killed, though they still cannot be directly targeted. In other words, bombing the munitions factory with the minimal number of workers present is much less controversial than inflicting the same number of casualties on innocents who are not engaged in a war-supporting activity. The non-innocent noncombatants killed increased their own risk by engaging in an enterprise solely designed for the purpose of war.<sup>17</sup> Even so, such fine distinctions are not critical to the thesis of this article. In any modern conflict there will be innocent noncombatants, and it is on them that this article focuses.<sup>18</sup>

In sum, noncombatants enjoy a more stringent right to life than combatants since they themselves have not opted to reduce or degrade it in any way, and no one else has that power. Returning to the initial issue of whether a commander must give priority to force protection or to the safety of noncombatants, the answer should be obvious. The stringency of the latter trumps the former, morally obligating the commander. Ultimately, force protection at the expense of noncombatant safety is immoral and contradictory to the achievement of any legitimate end.

### ***The Doctrine of Double Effect, and Centers of Gravity***

The above conclusion hardly resolves the issue. Knowing that noncombatant immunity is more important than force protection does not provide a normative framework for the commander attempting to win while waging a moral

war. The unfortunate fact is that in war innocent noncombatants will die, and commanders cannot reasonably prevent all such deaths while still fulfilling their moral obligation to protect national values. For instance, the Normandy invasion would not have been called off, nor should it have been, if a final reconnaissance report minutes before the operation identified a bold Frenchman who, to spite the Germans, decided to go fishing on the beach.

Such casualties or similar collateral damage are usually legitimized by an appeal to the "Doctrine of Double Effect," which, if satisfied, purports to provide the moral justification of an action that has simultaneous good and bad consequences. There are various formulations of this doctrine, but arguably the strongest and most plausible is by Michael Walzer. He proposes a version of the Doctrine of Double Effect which consists of four necessary conditions:

- (1) Legitimacy: the act is good in itself—i.e., it is a legitimate act of war.
- (2) Effect: the direct effect is morally acceptable.
- (3) Intent: the intention of the actor is good, that is, he aims narrowly at the acceptable effect; the evil effect is not one of his ends, nor is it a means to his ends, and, aware of the evil involved, he seeks to minimize it, accepting costs to himself.
- (4) Proportionality: the good effect is sufficiently good to compensate for allowing the evil effect.<sup>19</sup>

In the case of our unfortunate Frenchman at Normandy, all tenets are easily satisfied: the attack was a legitimate act of war; it had an acceptable direct effect in that it killed or removed the German combatants from the area; the intent of the Allies was good in that the death of the Frenchman was not used to facilitate mission success; and, finally, the good coming from the invasion far outweighed the evil coming from the Frenchman's death. Hence, the action, even if it killed the French innocent noncombatant, would be justified.

Since the efficacy of the Doctrine of Double Effect (hereinafter referred to as just "Double Effect") rests upon the third and fourth tenets, which carry the burden of the argument, let us look at some problems with them before relating the doctrine to the current strategy involving the strategic attack of centers of gravity.<sup>20</sup> Though Double Effect offers progress over less restrictive measures, the third and fourth tenets are problematically vague. The intentions of a commander are not readily known. Furthermore, the requirement to minimize evil and accept costs suffers from the same problem as proportionality, namely subjectivity in the assignment of relative values to military advantage, risk, and noncombatant injury.<sup>21</sup> The issue is much like the "sorites paradox" in logic: "large amounts," in this case of injuries to noncombatants, are easily recognized, but no line defining what constitutes a "large amount" seems identifiable.

In difficult cases, like those commonly arising from effects-based targeting against centers of gravity, the benefit of the doubt concerning the

vagueness rests with the opinion of the reasonable military commander. Consider the case of degrading an enemy command, control, and communications network. In Kosovo, degrading this center of gravity included the strategic bombing and destruction of the "RTS," the state-run broadcasting corporation in the Federal Republic of Yugoslavia, which resulted in the deaths of 10 to 17 civilians (the Serbs claimed 16).<sup>22</sup> Was this justified by Double Effect? Assuming the first two tenets to be satisfied, one must ask whether this met the requirements of intent and proportionality.

With regard to intent, NATO expressed two reasons for the attack. First, the station was alleged to have a dual use, because it supported radio relay for the Yugoslavian military and special police forces. Second, NATO declared that it needed "to strike at the very central nerve system of Milosovic's regime" and that strikes against targets such as the RTS were "a part of the campaign to dismantle the propaganda machinery which [was] a vital part of President Milosovic's control mechanism."<sup>23</sup> Neither reason evidences an overtly evil intent (though the Serbs argued that the act was simply a suppression of free speech and the truth), nor do they suggest that the civilians were used as a means.<sup>24</sup> However, there is some room for debate as to whether risk was minimized because of the possible inadequacy of warnings about the attack. Furthermore, proportionality is also suspect since the broadcasting at the facility "allegedly recommenced within hours of the strike," obviating any potential gain.<sup>25</sup> NATO responded to these criticisms by arguing that appropriate warnings were given before the attack, and that, regarding proportionality, a command, control, and communications system is a complex web that cannot be disabled by a single strike, and proportionality therefore has to be measured in terms of cumulative effects on the system rather than in terms of each discrete event.<sup>26</sup>

Such an interpretation of Double Effect by a reasonable commander apparently justifies this attack and others like it. This supposed justification is strengthened by a similar decision by the UN's committee charged with reviewing the NATO bombing campaign against the Federal Republic of Yugoslavia. But consider the following hypothetical scenario: What if the same target had been attacked with the same results, but by a ground combat unit rather than a missile strike? In such a case, Double Effect seems far less permissive in justifying the deaths of ten or more civilians. After all, the commander would have had many options to reduce the risk to the civilians, such as clearing the building of its occupants before destroying the facility. If he had not done so, he would have failed to satisfy the final demand of the third tenet, and ended up with an unacceptable ratio of civilian deaths to gain, failing the fourth tenet as well.

The fact that these moral judgments differ is rather problematic given that both scenarios have identical missions and identical results. It cannot be the case that the use of aerospace power in a strategic attack capacity somehow requires less moral stringency or less moral forethought than the use of force by

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***“Breaking the will of an enemy through strategic attack has no more moral legitimacy than terrorism if it capitalizes on the innocent.”***

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troops on the ground. Any such notion is wholly untenable. In actuality, the apparent disparity results not from a difference in kind between air power and other force, but from the aforementioned vagueness of Double Effect, which is then exploited by the way we employ the current doctrine mandating effects-based strategic attack of centers of gravity.

From its inception, strategic attack has been a way to degrade the enemy while reducing risk to the overall force. Aerospace power is the primary means for strategic attack, and it has proved effective and efficient. This is not to say that pilots conducting combat missions do not incur significant risk. They do, and they routinely act with valor. However, the aerospace force currently enjoys tremendous advantages because of the absolutely dominating technological sophistication involved. Ground forces, on the other hand, lack such a distinct advantage and hence face greater risks—US actions in Somalia speak to this point. For US forces, fighting the ground portion of a campaign is simply more dangerous and riskier for many more soldiers across the force. It would be ludicrous to believe that a ground invasion of Kosovo would have been casualty-free if the Serbs had offered any resistance whatsoever. While air-centric strategic bombing of centers of gravity is effective in breaking the enemy's will, it also is the safest way to wage a war, at least with regard to friendly forces.

Though effective and efficient, the use of such strategic attack inevitably involves a moral cost—exposing noncombatants to unnecessary risk and harm. Such an assertion raises an immediate objection, namely that during strategic attack noncombatants are exposed to less overall risk and harm since the use of ground forces would ultimately lead to more casualties, which prevents the latter from being the most moral course. The objection is a consequentialist approach based in the contention that the rightness of an action is dependent upon its ability to maximally obtain the good or end.<sup>27</sup> In the case of war, the good seems to be preserving lives, which then relegates the use of ground forces to a less desirable position as a moral option—assuming it does indeed result in more casualties. Such consequentialist thinking was clearly evident in NATO's response regarding the issue of proportionality in the RTS bombing.<sup>28</sup>

The consequentialist argument, though, is plagued by a significant problem—it relies on moral luck. In other words, a moral agent's action is

justified only in the cases where the outcome does in fact obtain. However, an agent's action will always lack sufficiency to actually bring about the desired end. Moral justification for the consequentialist is always contingent upon factors well beyond the actual span of the agent's control. Admittedly, this oversimplifies consequentialism, which in reality has a rather robust philosophic tradition. However, a thorough exploration is not required here, since none of its variants provides the desired sufficiency regarding action and outcome.

Consider the following example. George sees a man desperately trying to fix a flat tire on his van along the roadside. Feeling helpful, George lends him assistance. The man is soon on his way because of George's aid, and he thanks George, noting that he will now be able to make it to a very important engagement that evening. George believes that he has done a good deed, one worthy of moral praise. Arguably, he has. The next morning, however, George reads in the paper that a man in a van, in fact the man he helped, set off a car bomb the previous night, killing 40 people at a function attended by the mayor and other city officials. Is George's action, previously a morally praiseworthy one, now suddenly bad because of how things turned out? No, the goodness of George's act does not diminish despite how things turned out. The praiseworthiness of an action ought not be contingent upon factors beyond an agent's control but instead depends solely upon the agent himself.

Returning to the issue at hand, the fact that a ground option might incur more overall casualties than the use of aerospace power says nothing definitive about its rightness or wrongness. Intent has much more relevance to the rightness of an act than how things actually turn out; morality is concerned with how one ought to act rather than actualities such as what one does or might do given impunity from consequences.<sup>29</sup> Thus, what has to be examined in the consideration of the use of strategic bombing to affect centers of gravity as opposed to a ground force option is not simply proportionality but also intent, which is embodied in the third tenet of Double Effect.

Current practice acknowledges that attacking targets affecting centers of gravity requires prior assessments of the possible collateral damage, so as to establish proportionality and hence justification. However, if the resultant collateral damage is to also satisfy the third tenet of Double Effect, then it must be unintended. The exercise has become a rather litigious one as high-ranking commanders find themselves surrounded not only by strategists, tacticians, and intelligence officers, but by legal counsel as well. This occurred with the RTS station attack. In that instance, NATO contended that it was never the intent to kill the workers or use them as a way of achieving the destruction of the station; consequently, the casualties ought to be considered unintended. Assuming the number was not unacceptably high, the act is then deemed proportional, which completes its justification.

Yet such a rationale is actually an equivocation of sorts regarding the notion of unintended casualties. Unintended implies accidental, not simply

unfortunate. If a casualty is foreseen as a result of an action, it is difficult to consider that casualty unintended. Good intent is much more than a person uttering a reassuring explanation after the fact—that is why integrity is a virtue. Consider the deaths at Hiroshima. It is difficult to say that those deaths were accidental.<sup>30</sup> They were foreseen, at least a large number of them, even though the people involved were not the actual objective but an unfortunate side-effect. Such deaths are often still categorized as unintended by the reasonable commander. However, there is a significant difference, for example, between planning to destroy a vacant bridge but having a car with innocent noncombatants unexpectedly cross it during the attack, and planning to destroy the same bridge with the knowledge that the same car is certain to be on it. Therein lies a problem: foreseen deaths are not in fact unintended, but are knowingly caused and accepted to obtain some end.

An objection might be raised contending that the workers in the RTS were actually non-innocent noncombatants if they were in fact engaged in direct military support. Assuming this to be the case, one would concede that the implications of equivocation in this case are diminished since the deaths of non-innocents can be of the foreseeable variety. After all, they have less stringency in their claim not to be attacked because of their chosen enterprise. Yet the overall criticism remains: air-centric strategic attack of centers of gravity often has foreseeable effects upon innocent noncombatants. For example, suppose the power grid of a city is targeted. The object of the attack, military-related activities powered by the plant, would be crippled, but so would everything else drawing power from the source, including such things as hospitals, refrigeration, water purification processes, and a whole host of other life-sustaining aspects of society. The effects of such an attack are foreseen and cannot then be imagined to be accidental when they do occur.

When such actions have foreseeable negative effects to innocents, the moral burden falls upon the combatant to ensure that he minimizes them at the cost of increasing the risk to himself and his forces. This is in essence what the third tenet of Double Effect requires. However, the “minimization” usually manifests itself in the requirement to use precision-guided munitions with smaller effects as opposed to using more indiscriminate and destructive conventional ones. Such a move is hardly sufficient. If the objective is really valuable to the military campaign and the war is really worth winning, then the achievement of the objective must be worth the loss of soldiers’ lives. This does not mean that soldiers have to or even ought to die. What it does mean is that combatants must be the ones bearing the risk of dying rather than innocent noncombatants—even enemy noncombatants. This cannot be accomplished by simply using precision munitions. Though they may reduce damage in contrast to conventional weapons, they serve only to reduce risk within the discrete categories of noncombatant and combatant; they do nothing to affect the transfer of risk from noncombatant to combatant as morality demands. Such a require-

ment makes fighting the war much more difficult than the efficient option provided by aerospace power. The lives of combatants, perhaps many, will be lost, yet to give force protection priority is exactly what should not be done.

A final analogy might help to clarify and emphasize the above point. Consider terrorism. Its instances, even beyond al-Qaida, are many—the Algerian resistance to French occupation, the Irish Republican Army's fight against the British, and the various groups fighting for Palestinian autonomy—and the notoriety of these groups speaks to the effectiveness of their means. However, terrorism is condemned as immoral because of its indiscriminate nature, which causes foreseeable, innocent noncombatant deaths. In other words, terrorism harms innocents as a direct means to effect its end. Even if the terrorists' cause is considered in some instances to be worthy and good, terrorism, as a means, remains unpalatable, because the terrorist attempts to achieve expediency by placing his goal ahead of his moral responsibility to innocents.

The terrorist's response would be that his seemingly evil methods, though drastic, are in fact justified, because they are the only ones available in the given situation. Such a claim is unacceptable. Even a good cause does not justify the use of any possible method to achieve it. A murderer is no less a murderer just because he kills what he believes to be evil people in his attempt to improve society. And even if the terrorist is successful, there ought not be any gain in his moral legitimacy. (Anomalies do occur, like Yasser Arafat, who rose from terrorist to Nobel Peace Prize recipient.) The fact is that other means are always available. These alternatives will most likely expose the terrorist to a much greater risk and possibly jeopardize his ability to obtain his end, but they are available; terrorism is not the only recourse, as the terrorist claims. The reality is that the terrorist is unwilling to assume risk and instead transfers it to innocents. Certainly it is easier for the terrorist to destroy a school bus full of children than to attack a military installation.

Interestingly, however, the moral condemnation that applies to the terrorist differs only in degree, not kind, from the position advanced in this article regarding the current practice involving foreseeable deaths. The analogy is loose, as the terrorist's position is complicated by other factors such as his exploitation of the combatant/noncombatant distinction and failing to meet the *jus ad bellum* requirements for engaging in hostilities in the first place. However, breaking the will of an enemy through strategic attack has no more moral legitimacy than terrorism if it capitalizes on the innocent.

### ***Implications***

Fighting justly does not necessitate the end of aerospace power or the use of air-centric strategic attack—though staunch advocates of Douhet and LeMay might disagree. Aerospace power in itself is not immoral and is in fact essential for success in wars and conflicts of the future, which will not be won without the joint employment and application of forces. If the United States is



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***“Integrity demands not the obtaining of an end,  
but the rightness of the means.”***

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to fight these future conflicts justly, however, morality requires a shift in our current conception and practices regarding force protection.

Politicians and military leaders alike need to abandon the zero-casualty mentality and de-emphasize force protection at the cost of increased risk to noncombatants. Friendly casualty estimates are important planning factors, but they ought never to drive policy and strategy; national interests should. The current strategy of shaping the international environment and responding to threats involves myriad national interests that must be closely scrutinized to determine which among them are really worth the lives of American soldiers. When a conflict arises over a particular interest that lacks such import, cruise missile strikes, though convenient, are not morally defensible if they will harm the innocent. Such policy ought to give way to nonmilitary instruments of power, even if they are less efficient. Of course, the decision to refrain from military force with respect to a particular issue does not need to be advertised, so as not to degrade US diplomatic leverage.

Those interests worth the aforementioned costs obligate leaders and policymakers to act decisively and at the same time to inform the American people as to the importance of achieving those goals. In this age of asymmetric warfare, enemies will prey upon the ability to break the national will by exploiting American sentiments relating to casualty aversion regarding friendly forces—much like the effect in Somalia after US casualties were taken. Predicating support for military operations on the pretense of casualty-free operations serves only to encourage such a strategy. However, the recognition of a proper military ethic, which demands selflessness and integrity as outlined above, surmounts that threat. Professional soldiers are not afraid to fight when called upon, even when the danger is of the gravest sort. Military setbacks are ruinous to campaign strategy only when the interests are not worth fighting and dying for in the first place. When the interests are sufficiently important, the loss of some soldiers ought to only strengthen US resolve, at home as well as in the theater of operations, rather than weaken it. The general population is not so casualty-averse so as to denounce any operation involving US losses—witness the overwhelming support of the Gulf War despite substantial casualty predictions.

Upon recognizing the disparity of the moral status of innocent noncombatants in contrast to combatants, leaders are also obligated to consider and employ the full array of forces capable of accomplishing a given mission. In

doing so, their determination of what forces to use should not rest upon expediency and efficiency but upon balancing those needs with the moral requirement to reduce the risk to innocents. Unfortunately, aerospace power in isolation does not provide the capability to adequately satisfy the claims of morality with regard to reducing risk to innocents, at least not yet. When technology advances to the point that munitions have the same powers of discrimination as a soldier on the ground, aerospace power may well be sufficient. Until that time, policymakers and strategists cannot continue to believe in light of just war theory that aerospace power alone is an appropriate option; rather, jointly packaged forces from all services must be employed even when it entails more risk and associated costs.

Leaders also need to realize that not every center of gravity, critical capability, or critical requirement translates into a strategic target, even if its destruction facilitates the war effort. For those that do, the considerations of targeting and weaponry should extend beyond the realm of aerospace platforms. The use of ground forces and their associated effects must be similarly weighed when considering strategic targets. In essence, the doctrine of strategic attack must become more robust and inclusive of other services, or it will always be in jeopardy of moral inadequacy. Though riskier in the force protection sense than using precision-guided munitions, the use of special operations or air assault forces might present significantly less risk to innocents in certain strategic attack situations with foreseen collateral damage, and hence be the morally preferable choice. In other words, leaders must realize that legal sufficiency does not equate to moral goodness.

It is not clear that philosophers can develop more restrictive or definitive rules and principles than Walzer's Doctrine of Double Effect regarding conduct in war. Too often, one looks for a prescriptive methodology regarding morality that promises to delineate day from night in the moral twilight. Such efforts are self-defeating; morality is not an exact science. What is required is not more prescriptions, but leaders imbued with the virtues established in the professional military ethic. Properly developed notions of the core values, particularly selfless service and integrity, are what will clarify the gray areas and guide the combatant's conduct.<sup>31</sup> Integrity demands not the obtaining of an end, but the rightness of the means. Integrity thus precludes foreseeable deaths as accidental and unintended, because it demands right action regardless of the consequences involved. Integrity also entails selflessness in soldiers, since fulfilling their moral obligations inherently shifts risk onto themselves. Such must be the nature of the true military professional. If we cannot prosecute a war justly, then the war should not be fought. To do otherwise is a compromise of integrity and directly contradicts the very reasons for fighting.

#### NOTES

1. US Department of Defense, Joint Publication 3-0, *Doctrine for Joint Operations* (Washington: Department of Defense, February 1995), p. GL-4.

2. See John Warden, "The Enemy as a System," *Airpower Journal*, 3 (Spring 1995).

3. Sun Tzu, *The Art of War* (Boston: Shambhala Press, 1988), pp. 66-67.
4. See Paul Christopher, *The Ethics of War and Peace* (Englewood Cliffs, N.J.: Prentice Hall, 1994). Christopher embraces invincible ignorance and argues that from it, soldiers always have a professional obligation to fight in war. I believe this is mistaken. Soldiers may have deep moral objections to a war they consider unjust. Morality ought not to force them to act against such convictions, since their professional obligations were most likely undertaken only with the assumption that the goals of the profession were not contradictory with personal beliefs.
5. Since there is no higher authority, the domestic analogy between citizen and state no longer applies. Thus, force is the recourse necessitated.
6. The line does get blurred at the highest echelons where military leaders do influence national policy. For the purposes of this article, I ignore such cases.
7. This counterintuitive position was raised by prosecutors at the Nuremberg trials but subsequently rejected. Thus, ordinary German soldiers were not held responsible for *jus ad bellum* transgressions committed by Nazi leaders.
8. US Department of Defense, *Manual for Courts-Martial, United States* (Washington: Department of Defense, 1994).
9. See Judith Jarvis Thompson, *The Realm of Rights* (Cambridge, Mass.: Harvard Univ., 1990), p. 285.
10. *Ibid.*, p. 283.
11. For an excellent defense of this claim, see Thompson, *The Realm of Rights*.
12. By friendly noncombatants, I simply mean those citizens belonging to the combatant's state (or ally). This is in contrast to enemy noncombatants, who are the citizens belonging to the enemy state. The terms do not imply friendly or hostile intentions.
13. Both the US Army and the US Air Force have selfless service as one of their core values. The Navy does not. Its core values include only honor, courage, and commitment. However, the Navy's conception of courage embodies selfless service, as it requires "making decisions in the best interest of the Navy and the nation, without regard to personal consequences." For a more complete discussion of the Navy core values, see <http://www.chinfo.navy.mil/navpalib/traditions/html/corvalu.html>.
14. See Immanuel Kant's "Formula of Humanity" for a discussion of the immorality of people used solely as means, in *Groundwork of the Metaphysic of Morals*, trans. H. J. Paton (New York: Harper and Row, 1964).
15. I borrow the term "well-ordered" from John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard Univ., 1971). A well-ordered state is one designed to advance the good of its members and effectively regulate a public conception of justice, which includes and protects basic human rights.
16. See William J. Clinton, *A National Security Strategy for a New Century* (Washington: The White House, 1998).
17. See Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), p. 146, for a discussion of this point.
18. Hence, my future unspecified uses of the term noncombatant refer to the innocent rather than non-innocent ones.
19. Walzer, pp. 153-55. Walzer improves the doctrine with the addition of his revised third tenet, which I have incorporated verbatim.
20. *Ibid.*, p. 153. Walzer contends that only the third clause carries the burden.
21. See "Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia," internet, <http://www.un.org/icty/pressreal/nato061300.htm>, p. 13, accessed 20 March 2001, for a discussion concerning relative values.
22. See "Final Report," pp. 18-21, for a discussion of the incident. The estimate of 10-17 deaths comes from the "Final Report." For the Serbian claim of 16, see "Official Report of NATO Destruction," internet, <http://www.canadianserbs.com/destruction/list.htm>, accessed 20 March 2001.
23. "Final Report," pp. 18-19.
24. See "Official Report of NATO Destruction," for the Serbian position.
25. "Final Report," p. 20.
26. *Ibid.*, p. 21.
27. See Samuel Scheffler, ed., *Consequentialism and its Critics* (Oxford, Eng.: Oxford Univ., 1988), for a comprehensive discussion of consequentialism.
28. "Final Report," p. 21.
29. See Plato, *The Republic* (London: Penguin, 1955), p. 359, for a discussion of the myth of Gyges' ring and Socrates' advancement of the argument I present here.
30. See Elizabeth Anscombe, "War and Murder," in *Nuclear Weapons: A Catholic Response*, ed. Walter Stein (New York: Sheed and Ward, 1961), for this example.
31. The Navy does not hold integrity as a core value. Rather, honor demands "an uncompromising code of integrity." See note 13.

# New Options for Prosecuting War Criminals in Internal Armed Conflicts

GEOFFREY S. CORN and JAN E. ALDYKIEWICZ

Assume that instead of Australians, the US Army provided the main combat element to enter East Timor pursuant to United Nations authorization.<sup>1</sup> During an initial patrol, a US Army element encounters a local civilian who insists that an Indonesian officer who ordered the execution of two civilian villagers is hiding in a nearby house. After receiving command guidance, the patrol cordons and searches the house, and indeed finds an Indonesian lieutenant hiding inside. The lieutenant is taken to a joint detention facility and questioned about the allegation. He subsequently admits ordering the execution, but insists that he was merely obeying orders to eliminate key Timorese civilian leaders prior to the arrival of the UN force. Further investigation corroborates his confession by uncovering the bodies of the victims, both of whom had their hands bound behind their backs and were shot point-blank in the back of the head. The commander of the US task force now asks a simple but important question, "What do we do with him?"

The answer to this question depends on multiple considerations. Most of these considerations fall into the realm of national and international policy, including the desire to maintain positive relations with Indonesia, the concern over the appearance of impartiality on the part of the UN force, the availability and legitimacy of local criminal courts, and public relations concerns. However, before analyzing these policy considerations, it is first necessary to determine the legally permissible options available to the commander for dealing with this incident of summary execution. Assuming the command and the national and international chain of command express a desire to hold this officer accountable for his misconduct, the first instinct might be to hand him over to an international tribunal. However, unless and until the International Criminal Court becomes operational,<sup>2</sup> no such forum exists.

Until recently the only other legal option available to the command would be to turn the lieutenant over to local or Indonesian authorities. However, such a course of action could seriously undermine the probability of achieving justice, or at a minimum create the impression that justice was not a significant concern for the international community, and specifically for the force holding the offender. Today, however, the US commander might have one additional option: try the lieutenant before a US general court-martial. This article will outline the recent developments in international law justifying such a conclusion, and illustrate how these developments, when coupled with long-standing US military law, provide this new option for such cases.

### ***International Law: The Foundation for Prosecuting War Crimes***

When the Second World War came to an end, the trial of notorious war criminals by the International Military Tribunal at Nuremberg captured the attention of the international community. This episode in the history of the 20th century is most commonly associated with the dramatic exchanges between key members of the Nazi leadership and those selected to sit in judgment of their conduct. However, the most profound aspect of the cases tried before this tribunal, and other postwar military tribunals in both Europe and the Far East, was not the suspense associated with the trials, but their impacts on the law of war. Chief among these impacts was the evolution of the doctrine of individual criminal responsibility for violations of the laws of war. While this doctrine might seem an obvious element of the law of war to today's military and international legal professionals, it was in fact a relatively new component of international law in the immediate aftermath of World War II.<sup>3</sup>

During the period immediately following World War II, the international community revised the Geneva Conventions in an effort to establish a comprehensive regime for the protection of noncombatants during armed conflict. This revision led to the four Geneva Conventions of 1949, each devoted exclusively to a particular class of "war victims" (the wounded and sick; the wounded, sick, and shipwrecked at sea; prisoners of war; and civilians) and each incorporating the doctrine of individual criminal responsibility. In spite of the fact that the pre-war

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period had involved several extremely bloody civil wars (Russia, Spain, China), the primary focus of this effort was the regulation of conduct during international (state versus state) armed conflicts. Little effort was devoted to dealing with the protection of war victims during internal armed conflict or civil war. As a result, the provisions of the Geneva Conventions establishing criminal responsibility for violations of the mandates of the treaties applied exclusively to state-versus-state conflicts. Thus, in the half-century following World War II, the doctrine of individual criminal responsibility for violations of the law of war remained limited to acts committed during state-on-state conflicts.<sup>4</sup>

This fact is well highlighted by the first war crimes prosecution related to the civil war in the former Yugoslavia: *Prosecutor v. Tadic*.<sup>5</sup> In this case, the tribunal established by the United Nations Security Council to try war criminals from the Yugoslav conflict acknowledged the different level of regulation of state-versus-state conflict as opposed to purely internal conflict, and noted that this difference was based upon the concept of state sovereignty.<sup>6</sup> As a result, although the violence and suffering associated with such conflicts often seems even more intense than that associated with state-versus-state conflict, the scope of international regulation applicable to them has been and continues to be far less comprehensive than that applicable to state-on-state conflicts. The primary source of this regulation is contained in Article 3 of the Geneva Conventions, a provision that is identical in all four treaties and thus referred to as a “common” article. This provision, the exclusive source of internal conflict regulation resulting from the revision of the Geneva Conventions in 1949, established the requirement that warriors in a civil war must treat humanely individuals who were never participants (civilians), or who are no longer participants (*hors de combat*) in the conflict. However, unlike rules applicable to state-versus-state conflicts, these limited rules for internal armed conflicts contained no provision for holding violators criminally accountable for their misconduct.

Until recently, this absence of criminal responsibility provisions related to civil wars resulted in a lack of legal authority for holding individuals who commit violations of the law of war during internal armed conflicts criminally accountable for their misconduct. However, this is no longer the case. The conflicts in the former Yugoslavia and Rwanda led to one of the most profound developments in the law of war since the end of World War II, and certainly the most profound development in the realm of war crimes since that time: the application of individual criminal responsibility to violations of the law of war committed during internal armed conflicts. Stated more simply, international law has evolved to recognize that violations of the law of war during civil wars are war crimes.<sup>7</sup>

This development in the law of war resulted from the creation by the United Nations Security Council of ad hoc international criminal tribunals for Yugoslavia (ICTY) and Rwanda (ICTR), and the prosecutions conducted by these tribunals. These actions by the international community have affirmatively

answered the question of whether violations of the laws and customs of war committed during internal armed conflicts constitute war crimes. However, this has raised new questions regarding the extent of the rules applicable to internal conflicts, and the forums available for prosecuting those individuals who violate these rules. Although it is convenient to dismiss these questions as falling within the exclusive realm of civilian judges sitting on international courts, the answers are potentially significant for a military profession now almost routinely called upon to intervene in such internal conflicts.

### ***ICTY and Jurisdiction over Internal Conflicts***

In the first years of the last decade of the 20th century, the international community was reminded of the horror of civil war when the breakup of the former Yugoslavia erupted into armed conflict in Croatia, Slovenia, and Bosnia. As the evidence of inhumane treatment of civilians and detainees and wanton destruction of property mounted, so did pressure for an international response. Holding individuals criminally accountable for such excesses was among the potential responses. This idea blossomed into a proposal by the United Nations Security Council for the creation of an ad hoc international criminal tribunal established specifically to deal with the cases from Yugoslavia, vested with jurisdiction over "war crimes" committed in these conflicts, as opposed to a permanent court vested with wider jurisdiction.

In 1993, after addressing the conflict in Bosnia-Herzegovina on at least 15 occasions, the UN Security Council invoked its "enforcement" authority under Chapter VII of the United Nations Charter and passed UN Security Council Resolution (UNSCR) 827,<sup>8</sup> creating the ICTY.<sup>9</sup> This Security Council Resolution resulted in the first international war crimes tribunal since World War II and was hailed by many as a major step forward in the protection of innocent victims of war. However, as would be illustrated by the first case tried by this new tribunal, the Security Council created almost as much uncertainty as it did clarity with this action.

The most obvious initial task for the new criminal tribunal was to get itself up and running. The UNSCR authorizing the tribunal's creation provided virtually no guidance on how to do this. Instead, the tribunal was vested with essentially unlimited authority to establish the parameters for its existence and for the prosecution of cases before it. This would enable the tribunal to determine the scope of its authority over the international law violations alleged to have been committed in the former Yugoslavia. The rules for the operation of the tribunal were established remarkably quickly, and soon the prosecutor presented the first case to the ICTY. The questions answered by the tribunal during the course of this case would dramatically alter the landscape of legal regulation of internal armed conflicts.

Dusan Tadic was a low-level member of the Bosnian Serb militia. Under other circumstances he would have been just another unknown thug in a conflict characterized by bitter hatred and grotesque atrocities. But Tadic had the dubious distinction of being the first individual tried before the ICTY.

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***“International law has evolved to recognize that violations of the law of war during civil wars are war crimes.”***

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After his participation in the war, Tadic moved to Germany. While living there illegally, he was arrested by German authorities. When they learned of his participation in the abuse of Bosnian Muslims in the Omarska Detention Camp during the Bosnian Civil War, they decided to try him for violations of the laws of war under a German domestic law that allowed German courts to try such cases, even if there was no direct connection between the offense and Germany. Before he was tried, however, the prosecutor for the newly formed ICTY requested that Germany turn Tadic over for prosecution before the new tribunal. Germany granted the request.

The following excerpt from the indictment against Tadic illustrates the nature of the offenses he committed:

About late June 1992, a group of Bosnian Serbs, from outside the camp, including Dusan Tadic, entered the large garage building known as the “hangar” and called prisoners out of their rooms by name, including Emir Karabasic, Jasmin Hrnica, Enver Alic, Fikret Harambasic, and Emir Beganovic. The prisoners were in different rooms and came out separately. The group of Serbs, including Dusan Tadic, severely beat the prisoners with various objects and kicked them on their heads and bodies. After Fikret Harambasic was beaten, two other prisoners, “G” and “H,” were called out. A member of the group ordered “G” and “H” to [perform sexual acts on Harambasic] and then to sexually mutilate [him] . . . Emir Karabasic, Jasmin Hrnica, and Fikret Harambasic died from the attack. Enver Alic, who was severely injured, was thrown onto the back of a truck with the dead and driven away.<sup>10</sup>

The case of *The Prosecutor of the Tribunal Against Dusan Tadic a/k/a “Dule” Goran Borovnica* involved a multitude of international legal issues. Several are not relevant to this article.<sup>11</sup> The ICTY’s resolution of two issues, however, had a potentially profound effect on the future of the law of war: Which rules apply to civil wars, and are individuals who violate these rules subject to criminal liability under international law?

When Tadic and his lawyers were brought before the ICTY, they made a determined effort to have the case thrown out from the outset. The legal argument made to support this effort was that the law of war did not provide for prosecuting an individual for misconduct committed during a civil war. The



lawyers for Tadic argued that because the law-of-war treaty provisions providing for the prosecution of offenders applied only during state-versus-state conflicts, applying such liability to civil war was illegal.<sup>12</sup> They then argued that the absence of similar provisions in the limited law regulating conduct during pure civil wars supported their position. Thus, the central argument presented on behalf of Tadic was that prosecution of law-of-war violations committed during purely internal conflicts was the exclusive responsibility of domestic law and not the proper subject of an international criminal tribunal.

The ICTY rejected this argument. This rejection, however, forced the ICTY to interpret the scope of authority the UN Security Council had given it.<sup>13</sup> The Security Council Resolution creating the ICTY explicitly granted the power to try individuals alleged to have committed the following violations of international law:

- Violations of the Geneva Conventions of 1949 which qualify as “grave breaches” as defined by those treaties
- Violations of the laws or customs of war
- Genocide
- Crimes against humanity<sup>14</sup>

Tadic was indicted both for “grave breaches” of the Geneva Conventions and for violations of the laws and customs of war. For reasons beyond the scope of this article, the ICTY granted the defense request to throw out the grave breaches charges. This left only charges based on the authority to try individuals who violate the laws and customs of war.<sup>15</sup> While this provision seemed broad enough to cover Tadic’s misconduct, there was one potentially glaring omission: the UN Security Council Resolution did not explicitly apply to internal armed conflicts. Thus, Tadic argued that the power granted the ICTY by this provision did not extend to internal armed conflict and therefore could not be a basis for his prosecution.

This challenge forced the ICTY to address a critical issue: How and to what extent does the law of war regulate conduct during civil wars? If, as Tadic asserted, this regulation was based exclusively on treaty provisions specifically applicable to such conflicts, then the tribunal had no authority to try him, because the statute granted the tribunal the power over only *customary*, and not *treaty* based violations. The ICTY, however, was able to reject this challenge by concluding that the treaty provisions which regulated civil wars had evolved over time into customary international law and were therefore properly captured under the umbrella term “laws and customs of warfare.” The ICTY also concluded that other law-of-war obligations found in treaties regulating state-versus-state conflicts had also evolved to become applicable to civil wars by becoming customary international law.<sup>16</sup> Through this conclusion, the ICTY vested itself with authority over numerous offenses committed during purely civil wars.

In this one conclusion, the ICTY both labeled Common Article 3 and other basic provisions of the law of war as “customary international law” and placed them within the scope of international criminal liability. Although before

this decision there was widespread academic and governmental support for this conclusion,<sup>17</sup> extending criminal responsibility for such violations beyond domestic law and into the realm of international law was a major development in the law of war. This decision has resulted in expanded available forums for prosecuting such violations, and it provides solid support for the use of domestic courts to try individuals who commit atrocities during civil war.<sup>18</sup>

Certainly, the ICTY could have limited its conclusion to finding that violations of Common Article 3 and Protocol II fell within the category of violations of “the laws and customs of war,” and established jurisdiction over the Tadic case. However, the ICTY took a more comprehensive approach. The decision it reached, if considered a valid reflection of customary international law,<sup>19</sup> not only established that violations of the rules for civil war were crimes under international law, but also expanded the number of rules that apply to such conflicts. As the following excerpt illustrates, the ICTY concluded that this was required to protect the victims of modern conflict:

A State-sovereignty-oriented approach has been gradually supplanted by a human-being-oriented approach. Gradually the maxim of Roman law *hominum causa omne jus constitutum est* [all law is created for the benefit of human beings] has gained a firm foothold in the international community as well. It follows that in the area of armed conflict the distinction between interstate wars and civil wars is losing its value as far as human beings are concerned. Why protect civilians from belligerent violence, or ban rape, torture, or the wanton destruction of hospitals, churches, museums, or private property, as well as proscribe weapons causing unnecessary suffering when two sovereign States are engaged in war, and yet refrain from enacting the same bans or providing the same protection when armed violence has erupted “only” within the territory of a sovereign State? If international law, while of course duly safeguarding the legitimate interests of States, must gradually turn to the protection of human beings, it is only natural that the aforementioned dichotomy should gradually lose its weight.<sup>20</sup>

Based on this motive, the ICTY extended a number of basic customary international law rules regulating conduct during state-versus-state warfare to apply to civil wars.<sup>21</sup> Although not a “mechanical transplant” of these rules, the ICTY did establish that the basic regulatory provisions of the law of war, which operate to limit suffering and inject humanity into armed conflict, were equally applicable to internal as well as international armed conflicts. According to the opinion, both the evidence of customary international law mustered by the prosecutor and simple common sense mandated this conclusion.

The ICTY also noted that the importance of protecting human rights had steadily gained momentum in the realm of international law since the end of World War II. Accordingly, the tribunal should consider this interest when determining what rules applied to civil wars, because the human victims of such conflicts face the same risks and dangers as human victims of international conflicts. In essence, the ICTY relied on the need to protect human rights as a

justification for concluding that customary international law now intruded into an area of state sovereignty previously only minimally regulated through limited treaty provisions. The following passages from the opinion illustrates this point:

Indeed, elementary considerations of humanity and common sense make it preposterous that the use by States of weapons prohibited in armed conflicts between themselves be allowed when States try to put down rebellion by their own nationals on their own territory. What is inhumane, and consequently proscribed, in international wars, cannot but be inhumane and inadmissible in civil strife . . . .

It cannot be denied that customary rules have developed to govern internal strife. These rules, as specifically identified in the preceding discussion, cover such areas as protection of civilians from hostilities, in particular from indiscriminate attacks, protection of civilian objects, in particular cultural property, protection of all those who do not (or no longer) take active part in hostilities, as well as prohibition of means of warfare proscribed in international armed conflicts and ban of certain methods of conducting hostilities.

For members of the US and other armed forces whose nations impose policies mandating compliance with these basic rules during all military operations,<sup>22</sup> this might seem like an inconsequential conclusion. However, no matter how well-intentioned or enlightened such a policy-based application of law-of-war principles might be, it provides no legal basis for the punishment of opponents who violate these principles. The *Tadic* decision does. By reaching the conclusion that these basic rules apply to internal armed conflict, thereby providing a basis for applying the doctrine of individual criminal responsibility under international law, the ICTY established a basis for jurisdiction under international law for the prosecution of perpetrators of inhumane acts and wanton destruction committed during civil war.

If there was any doubt about the legitimacy of this result, the establishment by the UN Security Council of the International Criminal Tribunal for Rwanda (ICTR) dispelled it. The conflict in Rwanda that led to the creation of the ICTR was purely internal. Thus, when the Security Council acted to create the ICTR, there was no question whatsoever that the tribunal would be vested with the power to prosecute individuals whose misconduct occurred during a purely internal conflict. The crimes in violation of international law made subject to the power of the ICTR by the Security Council Resolution included genocide, crimes against humanity, and violations of Common Article 3 and Protocol II.<sup>23</sup> The ICTR statute,<sup>24</sup> unlike the ICTY statute,<sup>25</sup> specifically mentions violations of Common Article 3 and Protocol II as crimes within the jurisdiction of the tribunal.<sup>26</sup>

The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to:

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- a) Violence to life, health, and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation, or any form of corporal punishment;
- b) Collective punishments;
- c) Taking of hostages;
- d) Acts of terrorism;
- e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution, and any form of indecent assault;
- f) Pillage;
- g) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples;
- h) Threats to commit any of the foregoing acts.<sup>27</sup>

The specific grant of jurisdiction over violations of Common Article 3 and Protocol II seem to serve as indisputable evidence that the Security Council was cognizant of the *Tadic* decision at the time of the creation of the ICTR and concurred with the conclusions from that decision. This endorsement of the *Tadic* conclusions continued with the development of the still-nascent International Criminal Court. Should this court come into existence, it will be vested with the power to try "serious violations of the law of war," whether committed during international or internal armed conflict. Thus, the decision of the ICTY in *Tadic* laid the foundation not only for subsequent prosecutions of war criminals from the former Yugoslavia and Rwanda, but also for the application of international criminal responsibility to future internal armed conflicts.

### ***What Court should Prosecute Crimes Committed in Civil Wars?***

While many observers criticize the seemingly slow-moving nature of prosecutions in the Yugoslav and Rwanda tribunals, their existence, and the decisions they have made, have changed the landscape of the law of war. Customary international law of war now extends liability to participants in purely internal conflicts. The inclusion of war crimes committed during internal armed conflict within the jurisdiction of the proposed International Criminal Court<sup>28</sup> is a clear indication that this is a development that has become generally accepted as valid law. Indeed, one perceived benefit of the ICTY and ICTR is that they contributed to the movement to establish a permanent international court vested with the jurisdiction to try war criminals. What has received very little attention, however, is the possibility of relying on other forums to enforce the emerging norms of customary international law enunciated by the existing ad hoc tribunals.

One such potentially overlooked forum is the military court. The remainder of this article will argue that recent developments in the law of war make the use of US courts-martial another potential venue for the prosecution of individuals who commit war crimes during internal armed conflicts.

The legal foundation for all US courts-martial is the Uniform Code of Military Justice (UCMJ), a statute which establishes the power of courts-martial to try certain cases. This power is granted over both specific classes of people and specific crimes. It is the latter aspect of the UCMJ that most military personnel are familiar with, the "punitive articles." However, while jurisdiction to try someone for a violation of these punitive articles clearly extends to members of the US armed forces, it does not extend to non-US military personnel who violate the law of war, even if they subsequently fall into US custody (although if they are prisoners of war when the offense is committed, they are subject to the punitive articles). How then can a US court-martial be a legal option to try cases involving foreign nationals who may have committed war crimes in the course of their civil wars?

The answer to this question is found in an alternate source of jurisdiction within the UCMJ: Article 18, which establishes the jurisdiction of general courts-martial.<sup>29</sup> The prong of Article 18 that is normally relied upon to exercise general courts-martial jurisdiction is Clause 1, which grants power to try individuals subject to the Uniform Code of Military Justice, in most cases US service-members. However, Article 18 also includes grant of power for such courts to try *any* person for violations of the laws of war, even those not subject to the punitive articles. According to Clause 2 of Article 18, "General courts-martial also have jurisdiction to try any person who by the law of war is subject to trial by a military tribunal and may adjudge any punishment permitted by the law of war."<sup>30</sup> This grant of jurisdiction is not limited by the nationality of the accused, the nationality of the victim, the military status of the accused, the parties to the conflict in which the offense was committed, or the time when the offense was committed. The only requirement to trigger this grant of judicial power is that the offense be a violation of the law of war, and that the law of war provide for individual criminal responsibility for such a violation.

It is critical to recognize that the judicial power to try violations of the law of war established by the UCMJ is distinct from the power to try violations of the UCMJ (punitive articles) itself. In the first instance, the UCMJ is simply empowering the general court-martial to hear cases arising under international law. In the latter, the UCMJ is subjecting specific individuals to its own internal criminal prohibitions. Thus, in this instance, an individual would be subjected to the power of a court-martial based on a violation of the law of war; there is no application of domestic criminal law to the individual, as in the case of trial for a violation of the punitive articles. International law specifies the crime. Because the prohibition is international in nature, and therefore applicable prior to the violator falling into US custody, that trial for the offense would be valid under inter-

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***“Professional warriors share a common responsibility to respect the basic rules of warrior conduct.”***

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national law. In short, the United States would not be imposing its own law upon the accused, but instead providing a forum for the application of international law.

As far back as the Middle Ages, tribunals composed of members of the profession of arms were established to try other members of the profession when basic norms of conduct were transgressed.<sup>31</sup> The original version of Article 18 dates back to 1916, and the United States embraced the use of the military tribunal to prosecute individuals alleged to have violated the laws and customs of war as early as the Mexican War.<sup>32</sup> Perhaps the best known and most widespread use of the military tribunal to try violations of the law of war were the post-World War II tribunals in both the European and Pacific theaters. Hundreds of cases were tried before such courts. For the United States, this reliance on the military tribunal was even approved by the Supreme Court.<sup>33</sup> Furthermore, the use of military tribunals to try violations of the laws and customs of war is not only provided for in the UCMJ, but is also consistent with the history of punishing war criminals.<sup>34</sup>

While past uses of the military tribunal have involved cases where there was a connection between the United States and the conflict in which the violation of the law of war occurred, there has never been any legal requirement that such a connection exist. So long as the tribunal applies international law as the basis for the offense, adjudication seems permissible. Nor is there a “conflict connection” requirement in the plain meaning of Article 18. Furthermore, it has become common for nations to establish criminal jurisdiction in their domestic courts over individuals who violate the law of war, regardless of where or against whom the violation occurred. Indeed, Dusan Tadic was actually pending trial in Germany for his misconduct when he was turned over to the ICTY. Such assertion of jurisdiction is based on the international law doctrine of “universal jurisdiction,” which essentially allows any nation to prosecute violators of certain international laws on the theory that the violation offends every member of the community of nations. This concept is explicitly included in the Geneva Conventions of 1949, which require states bound to the treaty to enact domestic legislation providing for the prosecution of individuals who commit grave breaches of the Conventions. By concluding that law-of-war violations committed during internal armed conflict result in individual criminal liability under

international law, the ICTY and ICTR have essentially provided a basis for other nations to apply this doctrine to future violators. In fact, in Kosovo today, prosecutors are relying on Yugoslav law prohibiting "war crimes" as a basis to try individuals for atrocities committed during the civil war which preceded the NATO intervention.

The second distinction between the hypothetical use of a US court-martial in this situation and past cases is that prior uses of the military tribunal have involved law-of-war violations committed during an international armed conflict, not an internal one. Indeed, until the cases arising out of Yugoslavia and Rwanda, there was no consensus that the law of war subjected violators to criminal liability when the violation occurred during an internal armed conflict. This is no longer the case. The developments discussed above demonstrate that today violations of the law of war committed during an internal armed conflict result in individual criminal liability under the law of war. Thus, they qualify as offenses that, by the law of war, are subject to trial by military tribunal, and therefore fall squarely within the judicial power granted by Article 18.

This application of jurisdiction over war criminals by general courts-martial based on Article 18 is not only legally permissible, it is also applicable to any contingency operations where US forces gain custody of alleged war criminals. Clearly, the application of such jurisdiction to any given situation is not simply a legal issue, but also a delicate policy issue. However, before the current instinct to submit such a case to an international tribunal is acted upon, it might be worthwhile to consider whether there is a proper role for the use of a US military court to deal with the allegations.

In 1945, Japanese General Yamashita, Commander of Imperial Japanese Forces in the Philippines, became a prisoner of US forces. After his capture, he was tried by a military commission for war crimes. The commission held him accountable for the rampage of pillage, murder, and destruction conducted by his forces in the Philippines before his capture. His conviction, appeal to the US Supreme Court, and subsequent execution is best known in the international legal community for establishing the doctrine of "command responsibility."<sup>35</sup> There is another aspect of this case that perhaps holds renewed relevance today, an aspect rarely given attention, yet eloquently expressed by General MacArthur when he approved the sentence of the commission: "The soldier, be he friend or foe, is charged with the protection of the weak and unarmed. It is the very essence and reason of his being. When he violates this sacred trust, he not only profanes his entire cult, but threatens the fabric of international society."<sup>36</sup>

While the drama of this quotation was almost certainly intended to rationalize sending General Yamashita to the gallows, it nonetheless expresses a fundamental tenet of the law of war: professional warriors share a common responsibility to respect the basic rules of warrior conduct. At the point in history when General Yamashita faced the hangman as a consequence of his war crimes, it was routine practice for warriors to be judged by other members of the warrior

class. This is no longer the case. The international diplomatic and legal response to the atrocities associated with the wars in the former Yugoslavia and Rwanda has been to rely exclusively on tribunals composed of civilian judges to try alleged violations of the law of war. This trend to move away from the tradition of warriors judging warriors is rarely questioned, but it may have potential negative consequences. Most significant among these is the perception that civilian courts should adjudicate war crimes, and the resulting lack of military influence on the development of the international law related to warrior conduct that results from these adjudications. This article has demonstrated that as a matter of international law, the use of such civilian tribunals need not be the only option for holding those who commit atrocities during civil wars accountable for their misconduct. The use of military tribunals in such circumstances could serve the interests of justice, facilitate restoration of peace and stability, and ensure that warriors are called to account for their misconduct before members of the profession of arms.

#### NOTES

1. This article is based on our recent law review article, "Authority to Court-Martial Non-U.S. Military Personnel for Serious Violations of International Humanitarian Law Committed During Internal Armed Conflicts," published in *Military Law Review*. That article extensively addressed the international and domestic legal foundations and authorities for bringing such individuals before US military courts. This article is intended to provide a survey of the profound developments in the law of war that have occurred in the past decade which make consideration of such an option legally sustainable. It also is intended to highlight the various courts available for prosecuting such individuals, and to provoke consideration of whether it is time to reconsider the use of military tribunals for such prosecutions.

2. A development opposed by the United States.

3. See Malham M. Wakin, ed., *War, Morality, and the Military Profession* (Boulder, Colo.: Westview Press, 1979), pp. 415-30.

4. In the lexicon of the law of war, such conflicts are referred to as "international armed conflicts," and the laws of war applicable to such conflicts have been, and remain, substantially more comprehensive than the laws of war applicable to the other type of conflict that has plagued the second half of this century: civil war. These conflicts, occurring solely within the borders of an existing state, and involving internal forces and dissidents, are referred to in the law of war as "internal armed conflicts." Unlike state-on-state conflicts, these conflicts have been treated under international law primarily as domestic affairs, and therefore not the subject of international regulation.

"A non-international armed conflict is distinct from an international armed conflict because of the legal status of the entities opposing each other: the parties to the conflict are not sovereign States, but the government of a single State in conflict with one or more armed factions within its territory." *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, para. 4339 (Yves Sandoz, Christopher Swinarski, and Bruno Zimmerman, 1987). At para. 4341, it continues:

The expression "armed conflicts" give an important indication . . . since it introduces a material criterion: the existence of open hostilities between armed forces which are organized to a greater or lesser degree. Internal disturbances and tensions, characterized by isolated or sporadic acts of violence do not therefore constitute armed conflicts in a legal sense, even if the government is forced to resort to police forces or even armed units for the purpose of restoring law and order. Within these limits, non-international armed conflict seems to be a situation in which hostilities break out between armed forces or organized armed groups within a territory of a single State. Insurgents fighting against the established order would normally seek to overthrow the government in power or alternatively to bring about a secession so as to set up a new state.

Although Serbia was involved in the fighting, alongside the Federal Republic of Yugoslavia, its involvement did not change the character of the conflict from non-international to international. Serbia's involvement was at the behest and with the consent of the Yugoslav government, the legitimate government, and was directed



at the Kosovo Albanians, not Yugoslavia. Thus, there was no state-on-state conflict, which would cause the conflict to be characterized as an international armed conflict.

5. *Prosecutor v. Tadic*, Case No. IT-94-1-AR72, Appeal on Jurisdiction (2 October 1995), reprinted in 35 *I.L.M.* 32 (1996).

6. *Ibid.*:

Whenever armed violence erupted in the international community, in traditional international law the legal response was based on a stark dichotomy: belligerency or insurgency. The former category applied to armed conflicts between sovereign States (unless there was recognition of belligerency in a civil war), while the latter applied to armed violence breaking out in the territory of a sovereign State. Correspondingly, international law treated the two classes of conflict in a markedly different way: interstate wars were regulated by a whole body of international legal rules, governing both the conduct of hostilities and the protection of persons not participating (or no longer participating) in armed violence (civilians, the wounded, the sick, shipwrecked, prisoners of war). By contrast, there were very few international rules governing civil commotion, for States preferred to regard internal strife as rebellion, mutiny, and treason coming within the purview of national criminal law and, by the same token, to exclude any possible intrusion by other States into their own domestic jurisdiction. This dichotomy was clearly sovereignty-oriented and reflected the traditional configuration of the international community, based on the coexistence of sovereign States more inclined to look after their own interests than community concerns or humanitarian demands.

7. See generally William Shawcross, *Deliver Us From Evil: Peacekeepers, Warlords, and a World of Endless Conflicts* (New York: Simon & Schuster, 2000), discussing the conflicts in the Former Yugoslavia and Rwanda, and the United Nations response to them.

8. UN Security Council Res. 827, UN SCOR, 3217th mtg., UN Doc. S/RES/827 (1993), reprinted in 32 *I.L.M.* 1203 (1993), establishing the International Criminal Tribunal for the Prosecution of War Crimes in the Former Yugoslavia (ICTY) and adopting the statute recommended in the Secretary-General's report.

9. For a general overview of the development of the ICTY, and the *Tadic* proceedings, see Michael P. Sharf, *Balkan Justice: The Story Behind the First International War Crimes Trial Since Nuremberg* (Durham, N.C.: Carolina Academic Press, 1997).

10. The International Criminal Tribunal for the Former Yugoslavia website, *The Prosecutor of the Tribunal Against Dusan Tadic a/k/a "Dule" Goran Borovnica, Indictment*, para. 5.1, internet, <http://www.un.org/icty/indictment/english/tadicint.htm>, accessed 26 March 2000.

11. Such as the authority of the UN Security Council to establish the tribunal, the authority of the tribunal to establish its own rules of procedure and evidence, and the legitimacy of the ICTY taking jurisdiction over the case from Germany when a trial for the accused was already pending there.

12. This is most apparent with regard to the Geneva Conventions, which all include provisions for the punishment of violations of the treaties. However, these provisions, sometimes referred to as the "prosecute or extradite" obligations, are applicable only when the violation was committed against a "protected person," a legal status that does not exist during internal armed conflict.

13. UN Security Council Res. 827.

14. *Ibid.*

15. *Ibid.*, art. 3:

The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to:

- (a) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering;
- (b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
- (c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings;
- (d) seizure of, destruction or willful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;
- (e) plunder of public or private property.

16. Although the term "war" is used here, its use is somewhat of a historical anachronism. The application of the laws of war to a given situation is no longer contingent on the existence of "war." Because of the difficulties associated with defining such a term, the trigger for application of the laws of war was changed in 1949 to "armed conflict." This trigger was further subdivided into two categories: international (state versus state) and internal (purely within the state) armed conflict. See note 4, above.

17. Customary international law is that body of international regulation generally regarded as binding on all nations, absent any expression of consent. In this regard, it is substantially different from a treaty obligation, which exists only when the state expressly consents to be bound. It is well accepted in international law that a treaty obligation may "ripen" into customary international law, and thereby become binding on states which are not party to the treaty. See generally, F. Giba-Matthews, "Customary International Law Acts as Federal Common Law in U.S. Courts," 20 *Fordham Int'l. L.J.* 1839 (1997); Beth Stephens, "Human Rights on the Eve of the Next Century: U.N. Human Rights Standards & U.S. Law: The Law of Our Land: Customary International Law as Federal Law After Erie," 66 *Fordham L. Rev.* 393 (1997).

18. It is interesting to note that United Nations-sponsored prosecutors in Kosovo are today routinely charging individuals alleged to have committed atrocities during the Kosovo conflict with violation of Yugoslav domestic law prohibiting "war crimes."

19. In this regard, it is important to note that the United States supported this extension in the "friend of the court" brief filed with the tribunal by the Department of State.

20. *Prosecutor v. Tadic*.

21. *Ibid.*

22. Department of Defense Directive 5100.77 (9 December 1998), as implemented by CJCSI 5810.01A (27 August 1999) imposes the requirement that US armed forces comply with the "principles and spirit" of the law of war in all military operations, even those that are not considered "armed conflict." The armed forces of Canada, the United Kingdom, Germany, and France comply with similar directives, and the United Nations also requires forces operating in UN missions to apply a similar policy.

23. UN Security Council Res. 955, UN SCOR, 3453d mtg., UN Doc. S/RES/955 (1994), reprinted in 33 *I.L.M.* 1598 (1994), establishing the International Criminal Tribunal for the Prosecution of War Crimes in Rwanda (ICTR) and adopting the statute of the tribunal which is annexed to the Security Council Resolution.

24. *Ibid.*

25. UN Security Council Res. 827.

26. UN Security Council Res. 955, art. 4.

27. *Ibid.*

28. See *Rome Statute of the International Criminal Court*, UN Doc. A/CONF. 183/9 (1998), reprinted in 37 *I.L.M.* 998 (1998).

29. The modern-day Uniform Code of Military Justice has its history and origin, at least in part, in the numerous military codes, formerly known as Articles of War, promulgated since the American Revolution. See Walter T. Cox III, "The Army, The Courts, and The Constitution: The Evolution of Military Justice," 118 *Mil. L. Rev.* 1 (1987). See also, Robert O. Rollman, "Of Crimes, Courts-Martial and Punishment—A Short History of Military Justice," 11 *A. F. JAG L. Rev.* 212 (1969); Robinson O. Everett and Scott L. Silliman, "Forums for Punishing Offenses Against the Law of Nations," 29 *Wake Forest L. Rev.* 509 (Summer 1994). The authority to promulgate the Articles of War and finally the Uniform Code of Military Justice derives from Congress's authority under Article I, Section 8, Clause 14 of the Constitution giving Congress the power to "make Rules for the Government and Regulation of the land and naval forces." See *US Constitution*, article I, sect. 8, clause 14. However, it is also important to note that the Congress is also vested in Article I of the Constitution with the power to "define and punish . . . Offenses against the Law of Nations," see *US Constitution*, article I, sect. 8, clause 10, a power arguably exercised through Article 18.

30. 10 U.S.C.S. sect. 818, clause 2 (LEXIS 2000).

31. See Leslie Green, "The Law of War in Historical Perspective," *International Law Studies—U.S. Naval War College*, Vol. 72, 39 (1998).

32. See Scott Morris, "The Laws of War: Rules by Warriors for Warriors," DA Pamphlet 27-50-301, *The Army Lawyer*, pp. 6-7 (1997) (discussing the imposition of martial law and the establishment of military occupation tribunals by General Winfield Scott during the US campaign in Mexico during the Mexican-American War).

33. *In Re Yamashita*, 327 U.S. 1 (1945).

34. There are, nonetheless, two key distinctions between the case proposed in the hypothetical and those of the past. However, as will be seen, these distinctions do not invalidate the use of the general courts-martial in such situations.

35. This is a dramatically different standard of criminal liability than individuals are normally exposed to. The traditional concept of "principle" liability requires an individual to have either committed, commanded, counseled, or procured the commission of an offense to be held criminally responsible for its commission. Although under the Uniform Code of Military Justice, a commander who should have known that a war crime would occur, and took no remedial action, could certainly be exposed to a charge of dereliction of duty, this is a far less severe crime than holding the same commander accountable for the war crime itself. The Yamashita standard provides a basis for such accountability by charging the commander with a violation of international law.

36. Wakin, p. 223; quoting Telford Taylor, *Nuremberg and Vietnam: An American Tragedy* (New York: Bantam, 1970).

# Modern War, Modern Law, and Army Doctrine: Are We in Step for the 21st Century?

RICHARD J. BUTLER

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"Our first problem was with using suppressive fires against the air defense. According to standard Army procedure, we simply estimated where the enemy air defense might be, based on the terrain and the force's operating pattern. But the Defense Department's lawyers insisted that before we shoot at these locations, they had to be 'observed,' that is, not 'templated.' . . . By the lawyers' definition, someone would have to view Serb air defenses through photography or TV within a few hours of the time the artillery was to be fired. This was a requirement derived from the NATO Rules of Engagement that had been approved for the operation, without regard to the kinds of needs we might have for the Apaches. . . . Before we could shoot our suppression, we would have to have visibility over what was there, updated to the last few hours. . . . The commander would either have to accept the risk from other untargeted [templated] locations, or call off the planned mission. Surely there had to be a better way. Never had we imposed such a standard on ourselves. There had to be a misunderstanding, I thought."<sup>1</sup>

— General Wesley K. Clark, USA Ret.,  
concerning legal constraints to suppressive fires  
in support of AH-64 operations in Kosovo

To most of the US Army, the work of the International Criminal Tribunal for the Former Yugoslavia (ICTY) has little bearing on their pursuits in the profession of arms. Images of genocide, ethnic cleansing, and mass murder, while terrible in their own context, are not the types of crimes to which the men and women of the US armed forces would potentially be a party. Thus, while the US government supports the work of the tribunal as a matter of policy, the

findings of the court, beyond the occasional headline, are simply not of interest to US military professionals.

That is a mistake. In fact, when examining current tactical and operational Army doctrine in light of the work of the ICTY, it becomes evident that in some areas, commanders may not have the doctrinal tools or appropriate training mechanisms available to steer clear of potential criminal culpability in future conflicts.

Over the past several years, the Office of the Prosecutor has moved forward in exploring the legal basis of a criminal charge frequently referred to as “unlawful attack.”<sup>2</sup> These issues pertain to the legal review of the conduct of military operations that affect the surrounding civilian population (or associated nonmilitary objects). It examines the obligations of military commanders and other combatants under the 1949 Geneva Conventions, the 1977 Additional Protocols, and a broad body of international humanitarian law designed to safeguard civilians and other noncombatants. In select recent cases, these reviews have resulted in the indictment, apprehension, and conviction of operational commanders for violations of these conventions.

It is still premature to postulate how these trials and judgments might affect future US Army tactical and operational commanders, particularly with respect to the conduct of ground operations. However, on the basis of information that is in the public domain, it is clear that there are increasing expectations by the international community that military commanders be held to stricter standards of accountability with regard to making informed decisions on ground operations and target selection. As such, the jurisprudence coming out of the ICTY is likely to raise the bar for commanders to adequately justify the effects of military operations on the surrounding civilian populations and objects. These future effects will not be limited to only the traditional restrictions defined in US Army Field Manual (FM) 27-10, *Laws of Land Warfare*, but also will include more recent legal criteria pertaining to the issues of proportionality, “dual-use” infrastructure, terror, and even environmental damage.<sup>3</sup>

In contrast, Army operational and tactical doctrine in the fields of reconnaissance, intelligence, and fire-support remain heavily biased toward the rapid, accurate, and overwhelming application of force or fires on the enemy target or objective, often coupled with the least possible risk to friendly troops and assets. Less clear, particularly at the tactical level, is any similar doctrinal emphasis on a methodology for ensuring that civilians (or other categories of protected objects) are accurately tracked and protected as much as possible

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<sup>3</sup>(OJ).

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***“Commanders may not have the doctrinal tools or appropriate training mechanisms available to steer clear of potential criminal culpability in future conflicts.”***

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throughout a dynamic battlefield environment.<sup>4</sup> Further, little attention seems to be paid in the doctrinal planning process to the identification of potential situations where civilian and enemy military personnel or objects may be in transient proximity, or where objects of potentially hazardous (or long-term adverse) environmental impact to a surrounding civilian population are identified. Such omissions further preclude a systematic and continuing process of preventing inadvertent attacks against noncombatants, or of effectively monitoring the effects of combat operations on the surrounding civilian population.

Ultimately, these doctrinal shortcomings can lead to excessive civilian casualties, unduly restrictive or inflexible Rules of Engagement (ROE) constraints (driven by adverse public or media perceptions), and, in extreme cases, a future tactical or operational commander facing issues of potential criminal culpability under international justice and humanitarian law.

### ***Background***

The concept of charging crimes under the mantra of unlawful attack is relatively new in terms of international humanitarian law. In the World War II era, attacks on proscribed objects or facilities were dealt with on a case-by-case basis and were generally limited to small-scale and clearly egregious incidents, such as machine-gunning lifeboats, deliberately attacking a medical facility, or reprisal raids against villages.<sup>5</sup> Trials as to the “unlawfulness” of specific military operations or campaigns were not pursued as a general rule, in part due to fears that military commanders of the victorious Allied powers could themselves be found potentially culpable for similar acts (or tactics) as the accused.

In 1993, in response to widespread allegations of crimes occurring as part of the conflict in Bosnia, the UN Security Council established the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Law Committed in the Territory of the Former Yugoslavia.<sup>6</sup> In doing so, the international community also created a modern forum for the legal review of unlawful attack (as defined in the Geneva Conventions and the Additional Protocols). This was done, in part, by recognizing such violations as elements of criminal acts charged under Articles 2, 3, or 5 of the Statute of the Tribunal.<sup>7</sup>

As an expansion of the provisions of unlawful attack, the International Criminal Court (ICC) Criminal Statute articulates many of these violations as criminal acts in their own right. These crimes (grouped under Article 8, War-Crimes) include not only traditional violations of the laws or customs of war, but also more modern issues such as the crime of attacking personnel on peacekeeping missions, and the crime of “excessive incidental death, injury, or damage.”<sup>8</sup>

### ***Select Issues by the ICTY Office of the Prosecutor and Relevant Trial Judgments***

There are several points of departure for examining the work of the ICTY with respect to these rising expectations of the international community, and how it may limit or otherwise affect future Army commanders. First is the *Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia*.<sup>9</sup> This committee report, and its recommendations, provided the foundation for the Prosecutor’s decision to not open a formal investigation into charges of unlawful attack by NATO forces against Yugoslavia as a result of the 1999 bombing campaign. While this report deals primarily with air operations, many of the command, intelligence, and target-selection issues are directly applicable to ground combat operations. Second is the case of the *Prosecutor v. Tihomir Blaskic*, in which former Bosnian-Croatian General Tihomir Blaskic became the first post-World War II commander charged with and convicted of crimes related to unlawful attack offenses with respect to ground operations.<sup>10</sup> Third is the current case of the *Prosecutor v. Stanislav Galic*, in which a Bosnian-Serb corps commander is charged with “Crimes against Humanity” and “Violations of the Laws and Customs of War” based on the conduct of military operations in and around the city of Sarajevo from 1992 to 1994.<sup>11</sup>

In all three cases, findings, legal filings, or judgments support an increasing obligation on commanders to take all practical and reasonable measures to obtain accurate information on the surrounding noncombatant population and environment before and during the conduct of military operations. They also call for commanders to exercise restraint, when possible, if such information indicates that operations can be reasonably expected to cause “disproportionate” civilian casualties or damage. Further, they suggest that it can be viewed as a dereliction of the commander’s responsibilities if he or she fails to take all practical measures in obtaining this information and then incorporating it into the planning and subsequent execution of combat operations. These points will become evident as each case is examined below.

*Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia*<sup>12</sup>

On 14 May 1999, citing Article 18 of the Statute of the Tribunal, the Prosecutor of the ICTY established a committee to assess allegations of serious

violations of international humanitarian law with regard to the ongoing NATO bombing campaign against the Federal Republic of Yugoslavia.<sup>13</sup> Notwithstanding potential jurisdictional issues (i.e., the US government never publicly addressed the issue of US military forces—operating as part of NATO—coming under the legal jurisdiction of the ICTY),<sup>14</sup> this Committee Report details the process under which the allegations of unlawful attack were examined by the Office of the Prosecutor.

To begin, the Committee Report (paragraphs 28 and 29) outlines the broad legal issues specific to target selection and military attacks. As components of that issue, the *actus reus* (physical element) and the *mens rea* (mental element) for committing the crime of unlawful attack are explored. As noted in the Committee Report:

Military commanders are required to direct their operations against military objectives, and to ensure that the losses to the civilian population and damage to civilian property are not disproportionate to the concrete and direct military advantages anticipated. Attacks not directed against military targets and attacks which cause disproportionate civilian casualties or civilian property damage may constitute the *actus reus* for the offense of "Unlawful Attack." The *mens rea* for the offense is intention or recklessness, not simple negligence. In determining whether or not the *mens rea* has been met, it should be borne in mind that commanders deciding on an attack have the following duties:

- a) To do everything practicable to verify that the objectives to be attacked are military objectives;
- b) To take all practicable precautions in the choice of methods and means of warfare with a view to avoiding or minimizing incidental civilian casualties or civilian property destruction, and;
- c) To refrain from launching attacks which may be expected to cause disproportionate civilian casualties or civilian property damage.<sup>15</sup>

Continuing from the Committee Report:

A military commander must set up an effective intelligence gathering system to collect and evaluate information concerning potential targets. The commander must also direct his forces to use all available technical means to properly identify targets during operations. Further, a determination that inadequate efforts have been made to distinguish between military objects and civilian personnel and objects should not necessarily focus on one specific incident. If precautionary measures have worked adequately in a very high percentage of cases, then the fact they have not worked in a small number of cases does not necessarily mean they are generally inadequate.<sup>16</sup>

The above criteria focus on three main issues. First, the military commander is required to establish a reconnaissance, intelligence, and targeting system to direct target identification, selection, and other related battlefield

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***“There are increasing expectations by the international community that military commanders be held to stricter standards of accountability.”***

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operations. Second, such a system should be designed to provide the commander with the necessary information for making informed judgments as to the potential effects of operations against these targets on the surrounding civilian population and objects. Third, this system is to be maintained and monitored to ensure continued compliance with the goal of keeping civilian casualties and damage to a minimum. The essence is that a commander is expected to take all reasonable measures to acquire information and use it as necessary to ensure that military operations under his or her command do not either inadvertently target civilian personnel and objects or cause disproportionate civilian casualties or damage with respect to the engagement of the military objective.

*Prosecutor v. Tihomir Blaskic, Judgment*

In the case of the *Prosecutor v. Tihomir Blaskic*, the issue of civilian populations and objects being the target of attack form the basis of counts two through four of his indictment and subsequent conviction by the ICTY.<sup>17</sup> These counts centered on two issues: Was the destruction justified by military necessity? And were unlawful attacks directed against civilians?<sup>18</sup> In exploring these specific issues, however, the Trial Chamber also examined the broader principles pertaining to both “distinction” and “proportionality” as basic tenets of lawful military operations.<sup>19</sup>

To frame further discussion, the two principles are defined as follows:

- *Distinction* requires that military commanders have the means available to be able to attempt to distinguish between military combatants or targets and civilian personnel or objects. The goal of this principle is the prevention of broad indiscriminate attacks without regard to civilian casualties and property.

- *Proportionality*, also commonly referred to as “justified by military necessity,” is developed on a case-by-case basis. It measures the results of an attack against a military objective in relation to the impact caused to the civilian population or objects, to determine whether the results of such an attack might be considered excessive. Under this principle, the attack against the military objective is weighed in light of the military advantages expected or anticipated at the time.<sup>20</sup>



Under these principles, the commander has the obligation to ensure that he or she has the capacity to know and understand the battlefield area or the target environment. The failure of a commander to establish and maintain a system (reconnaissance, intelligence, or target surveillance) capable of distinguishing between civilians and combatants, or the failure to use this system to limit civilian casualties and damage (either in the planning or execution of the operation) can be viewed as proof of intent to make the civilians the object of the attack. It is no longer adequate for a military commander to broadly justify civilian casualties and damage in and around military objectives as unavoidable "collateral damage," secondary to military considerations. This process is legally referred to as "diligence in establishing the necessity and legitimacy of the military objective."

This failure was noted specifically in the conviction of General Blaskic. The Trial Chamber noted that General Blaskic had a "military surveillance" system organized, and thus he had the means to know of the battlefield area in his zone of operations. His failure to exercise this knowledge by ordering attacks on a series of essentially undefended villages (coupled with his troops' criminal activities after the seizure of those villages), led the Chamber to conclude that the attacks could not be justified for "strictly" military reasons—despite acknowledging the tactical value which possession of the villages (along a key road) subsequently gave his forces. Ultimately, the Trial Chamber used this as a basis to conclude that since the attack could not be "justified by military necessity," the civilians were the objects of the attacks.<sup>21</sup>

*Prosecutor v. Stanislav Galic*<sup>22</sup>

In pre-trial filings for the ongoing case of the *Prosecutor v. Stanislav Galic*, the Prosecutor has further defined her position on the issue of the liability of a commander for attacks against civilians.<sup>23</sup> In this regard, the requirements of Article 57(2)(a) of Additional Protocol I of the Geneva Accords are reiterated, those being that a commander shall "do everything feasible to verify that the objectives are neither civilians nor civilian objects and are not subject to special protection, but are military objectives."<sup>24</sup>

Further, with regard to a commander's basis of knowledge, the Prosecutor noted:

Those who decide upon and order an attack will often do so on the basis of information provided, inter alia, by intelligence services and they [commanders] will not themselves have the opportunity to check the accuracy of such information. They are nevertheless obliged to ensure that the potential target of an attack was properly assessed, and in case of doubt to its nature, they must seek additional information.<sup>25</sup>

On this basis, the Prosecutor submitted:

These duties apply in situations even where a commander *believed* that an object was a legitimate military objective. If he or she launches an attack and the said

object turns out to be a civilian object, the commander must be regarded as having acted "willfully" [i.e. deliberately or recklessly] if he or she failed to do everything objectively feasible to confirm whether the object was in fact a legitimate military objective.<sup>26</sup>

This standard, if accepted as law, would place a significant responsibility on commanders for ensuring positive and proactive reconnaissance, intelligence, and target-acquisition activities at all levels. Along the same vein, it invites a finding of criminal liability on a commander who is responsible for an inadvertent attack upon a civilian object, and who is unable to adequately demonstrate the required diligence in establishing the necessity and legitimacy of the military objective.

### ***The Practical Application of "Military Necessity" and "Diligence in Establishing the Legitimacy of the Objective"***

Returning to the NATO air campaign over Yugoslavia, the practical application of the "military necessity" and "due diligence in establishing military legitimacy" benchmarks can be observed with respect to three specific incidents. The most significant incident was the NATO attack on the Serbian TV and radio station in Belgrade on 23 April 1999. The bombing of this station occasioned heated international media criticism and raised the issue that the targeting of this admittedly government "owned and controlled" facility was not militarily justified. Such concern centered on the issue of the station being solely part of the "pro-government propaganda apparatus," and that this circumstance alone should not justify targeting the broadcast station, particularly in light of the number of civilian casualties incurred. In this regard, the ability of NATO to publicly articulate in detail how the station (and its associated equipment) was part of the Serbian military command, control, and communications network served to help identify the military advantage expected by NATO from attacking this specific "dual-use" component of the network.<sup>27</sup> Without such intelligence, and the decision to openly come forward with the information derived from it to establish military necessity, it is debatable whether the international community would have accepted NATO's rationale for the attack.

In another reviewed incident, the attack on the Djakovica refugee convoy on 14 April 1999, it was determined that the target was in fact a civilian object. However, despite the nonmilitary nature of the attacked object, NATO claimed that available intelligence and reconnaissance data indicated the convoy was a transient military object. NATO also indicated that the rules of engagement (ROE) in effect at the time precluded a "positive" final visual identification prior to attacking the target. Further, it was noted that when the civilian nature of the object was suspected after the first several passes, attack operations were immediately suspended. Under these circumstances, while the

Office of the Prosecutor noted that the ROE might have been a contributing factor, it was determined that neither the aircrew nor the commanders displayed the degree of recklessness in failing to take precautionary measures in identifying the target that would sustain charges.<sup>28</sup> In this instance, the Prosecutor recognized that the standard of “all practicable precautions with a view to avoiding, or minimizing incidental civilian casualties or civilian property destruction” could be met with the diligent use of available intelligence and reconnaissance capabilities. The standard does not require extraordinary steps that place undue or inordinate risk on the attacking forces, or the unrealistic expectation of a perfect view of the battlefield.

The final incident, the Chinese Embassy bombing on 7 May 1999, was, by US government admission, a mistaken attack based on incomplete information and an isolated failure in the target-validation process. As such, the aircrew and direct military leadership were not held responsible for attacking the target, based on incorrect information beyond their control.<sup>29</sup> As this incident was noted to be an isolated failure, and not a systemic lack of diligence, it further did not fit the criteria as a “willful” attack against a civilian target.

### ***Relevant US Army Doctrine***

Despite the Prosecutor’s findings that there was insufficient grounds to initiate a formal investigation against NATO’s prosecution of the air campaign over Yugoslavia, one should not conclude that a ground component review would have fared similarly. NATO air components had months to plan and staff target identification, nominations, and operations. The inherent precision guidance and sophistication of launch platforms and ordnance further contributed to expectations that military objects could be engaged with little threat of collateral damage. Finally, the operational environment allowed for the engagement of ground targets from an altitude well above the range of most Serbian air-defense threats, negating the requirement for widespread supporting or suppressive fires necessary to minimize the risk to allied pilots and aircraft. Ground forces, if engaged, would not have had the same permissive and sterile operating environment, a factor that was clearly understood by NATO’s decisionmakers.

In this context, it is useful to refer back to the observations made by General Wesley Clark in dealing with the “disconnect” between the theater ROE considerations (primarily designed for the high-altitude air bombing campaign) and the operational realities of Army AH-64 mission execution. General Clark accurately noted that the ROE interpretation limited the Army to engaging the Serbs in a manner that was different from their training, tactics, and procedures, and well above any prior operational restrictions. These same restrictions also served to place commanders in the difficult position of choosing between mission execution at an increased risk to friendly personnel and assets (with all the inherent liabilities), or abandoning the mission (with all the

inherent tactical consequences). It is not hard to imagine the frustration that operational commanders must have felt toward their DOD legal counterparts sitting miles away from their mission reality. Yet, in fairness, can it be said that Army ground doctrine has prepared tactical and operational commanders to fight a middle- to high-intensity engagement in any legal environment other than the wide-open, civilian-sparse southern Iraqi deserts? Should commanders have been surprised to discover that the ROE would not allow them to fight as they had trained?

With respect to the previously listed expectations of the international community, it does not appear that much of our current doctrine addresses key legal issues that may arise in a future ground combat environment. In fact, it is clear in much of our doctrine that there is no systemic process that continues after the development of the rules of engagement to address issues pertaining to inadvertent attack or proportionality, particularly in the disciplines of intelligence, reconnaissance, targeting, and fire support. It is at this juncture where future tactical and operational commanders will be at risk for potential criminal culpability unless this area is addressed.

In examining this particular issue, Army Field Manual 6-20-10, *Tactics, Techniques and Procedures for the Targeting Process*, is a proper departure point. This manual discusses in depth the "Detect-Decide-Deliver and Assess process" as well as the roles and functions of the "Targeting Team."<sup>30</sup> Absent in the targeting methodology, however (particularly in the creation of the High-Payoff Target List, the Attack Guidance Matrix, and the Target Selection Standards), is any discussion on the processes that would be used to either predict or monitor the impact of such fires on the surrounding civilian environment.<sup>31</sup>

FM-6-20-10 notes that the responsibility to monitor the effects of friendly operations on the civilian populace is within the realm of the G-5 or civil affairs officer. As part of this responsibility, a G-5 officer is nominally placed in the plans cell of the division or corps main command post.<sup>32</sup> With regard to that representative's role in the targeting process, he or she is to "produce input to the Restricted Targets List (RTL) and to coordinate [civil affairs] support for the Intelligence Preparation of the Battlefield (IPB) and targeting process."<sup>33</sup> In reality, however, it is difficult to envision how the G-5 or civil affairs representative could play any substantive role in a dynamic maneuver environment—either in the euphemistically vague mission of "coordinating [civil affairs] support for the IPB and targeting process," or in the more defined mission of providing input to the RTL.

As presently envisioned, the bulk of the civil affairs assets will be operating out of the rear command post, and will form the nucleus of the rear area operations cell (RAOC). While the RAOC is tasked to gather information from such sources as host-nation agencies, civil affairs units, interrogations of prisoners of war, and defector reports, most of this information relates to a static battlefield environment. This information, while valuable, may be days old, and

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***“How the Army will be permitted to fight  
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will not be of particular use in tracking various transient civilian or protected objects (refugee gathering areas, mobile medical facilities or shelters, governmental or nongovernmental organizations, humanitarian relief assets, etc.). In addition, the RAOC will normally be to the rear of the main command post, and consequently well removed from the current operations cell, the intelligence cell, and the analysis control element. Without constant access to these sources of combat information and tactical and operational intelligence on the enemy side of the forward boundary, it is difficult to envision how accurate monitoring and tracking of these civilian personnel and objects could be accomplished. At the same time, such information assembled at the RAOC must be available in a timely manner to the plans, current operations, and targeting cells, where it can be integrated into the commander's view of the battlefield environment and factored into his or her decisionmaking process.

In examining the role of the G-2 (intelligence) section in the targeting process with regard to minimizing the effects of friendly fires on surrounding civilian populations and objects, the limited discussion in US Army doctrine on the issue revolves around the IPB process, which is described as the “foundation for the rest of the targeting process.”<sup>34</sup> While not specifically stated, the assumption appears to be that just as the IPB process will help to identify high-value targets, it will also somehow preclude the inadvertent targeting of nonmilitary objects or personnel—or the targeting of military objects whose engagement will have a significant adverse impact of surrounding civilians.

Despite this blind faith, Field Manual 34-130, *Intelligence Preparation of the Battlefield*, contains almost no discussion on this issue with respect to the conduct of conventional military operations.<sup>35</sup> What little guidance is found in that manual relates to the identification of known “protected” objects or civilian concentrations as part of the situation template. Issues of “dual-use” infrastructure or an analysis of the impact of their destruction to the civilian population are not addressed. Further, with respect to operating on a dynamic battlefield, there is no doctrinal discussion on tasking collectors to identify and track mobile noncombatant populations or objects in the same manner as assets are tasked to confirm or deny potential enemy courses of action and locate high-value targets.

Returning to FM 6-20-10, the role of the Staff Judge Advocate (SJA) in the targeting process is also briefly discussed, specifically in the area of targeting responsibilities. In this regard the SJA is viewed as an auxiliary player in the process, who is called upon in certain operations “if necessary.”<sup>36</sup> Specific roles and responsibilities are undefined. Conversely, in reviewing the first draft of FM 3-06, *Urban Operations*, legal considerations are viewed as critical to the targeting process, presumably a result of operations in this environment having the highest potential for issues with noncombatants and nonmilitary targets.<sup>37</sup> However, even here, other than for the formulation of the ROE, the specifics of how the SJA supports the more dynamic targeting process remain undefined. Completing the circle, in FM 27-100, *Legal Support to Operations*, the SJA branch envisions itself as a major player in the deep operations and targeting cell. However, for specifics as to what tasks SJA officers are to accomplish, and how, readers are referred back to the undefined roles in FM 6-20-10.<sup>38</sup>

In a worst-case scenario, this lack of systemic procedure may lead to specific failures on several counts. First, taking a broad view, there appears to be no effective planning methodology to monitor the impact of friendly force combat operations on civilians or civilian objects on the enemy side of the forward boundary. The intelligence and operations (G-3) sections have the tools to monitor friendly and enemy activity with regard to anticipated courses of action, and the means to do so from the current operations, the deep operations, or the targeting cell and the main command post. The civil affairs representative has no such dynamic tools, and only a limited means from the RAOC. Thus, even when military necessity requires an attack or operation with the anticipation of adverse impact to surrounding civilians, there is no real-time or near-real-time methodology to continuously monitor the effects during the course of the operation outside the visual range of engaged units and observers. The result could be an attack or operation that causes more casualties and damage to the civilian population and objects than expected, and possibly excessive to the military benefit anticipated—with potential criminal culpability for the commander. This may be particularly true with regard to “deep-attack operations,” where battle damage assessment collection and methodology focus on analysis of effects on the targets and not on the surrounding battlefield environment.

Second, on the narrower aspect of targeting, the lack of a methodology to track civilian objects (especially transient ones) through the battlefield environment can lead to incidents such as those reviewed by the ICTY during the NATO bombing campaign. Again, this risk is particularly acute with regard to “deep-attack” operations, which rely far more on target information derived from intelligence sources as opposed to visual identification.<sup>39</sup> The varying degree of vulnerability of these collectors (and the associated analysis of their data) to concealment and deception operations greatly increases the chances of such incidents occurring. This also applies to deliberate efforts by the

opposing force to create such incidents for their own political and propaganda purposes (as noted in Yugoslavia, Iraq, and Afghanistan). In this regard, select ground force "counter-fire" assets (artillery, multiple-launch rocket systems) are far more vulnerable to such efforts than rotary-wing or fixed-wing assets.

Third, in recognition of these issues, and the growing sensitivity of public, media, and political leaders to civilian casualties and collateral damage, it should be expected that future rules of engagement will be far more restrictive than those in past ground conflicts. These restrictions will most acutely affect reconnaissance, intelligence, and "over-the-horizon" targeting and fires. The effect on how the Army will be permitted to fight should be reflected in how the Army trains to fight. Suppressive fire directed against templated enemy positions, counter-battery fire based on radar information, missile strikes against enemy command post locations derived through non-visual means (e.g., communications intercepts), and even harassment and interdiction fires may no longer pass legal review if the danger to the surrounding civilian population is judged as too great.<sup>40</sup> If that is the case, then the Army should begin exploring for doctrinal solutions now. Future commanders should not be forced to develop ad hoc tactics on the eve of battle.

## *Conclusions*

As international humanitarian law pertaining to unlawful attack continues to advance and be refined through the course of various war-crime trials, even the most conservative judgments will undoubtedly place additional responsibilities on military commanders in weighing the military objective and the impact on the surrounding civilian population or objects. This will include civilian casualties, short- and long-term damage, and even in some instances the environmental impacts of such operations.

While directives pertaining to the conduct of combat operations in and around the surrounding population should always be contained in the rules of engagement, there appears to be a significant gap in Army doctrine and training for the implementation of such procedures. This is particularly acute at the tactical and operational echelons of corps, division, and brigade, where the risk of inadvertently attacking civilians and civilian objects will be most pronounced. Conversely, joint targeting procedures at echelons above corps, in both doctrine and application, as illustrated in the bombing campaign against Yugoslavia, were demonstrated to be robust enough to withstand international judicial review.

The failure to have these systems or processes in place and exercised may be viewed as an indicator by international humanitarian law specialists that a commander did not take "all practicable precautions with a view to avoiding or minimizing incidental civilian casualties or civilian property destruction," as required. Further, under currently proposed legal standards, this omission might

also be viewed as indicative of a “willful” attack on the civilian population or objects, thus exposing a commander to potential criminal prosecution.

Modern conventional ground operations will continue to challenge the professional, moral, and legal skills of commanders. Future commanders will have to balance the professional obligations of the mission and its successful accomplishment with the moral obligation to minimize risk to troops under their command. They will also have to balance the objectives and conduct of the mission with their legal obligation to safeguard the surrounding noncombatant population. Commanders need updated doctrine that meets the modern realities of conventional combat in the 21st century.

#### NOTES

The views expressed herein are those of the author alone, and do not necessarily reflect the views of the International Tribunal or the United Nations in general.

1. Wesley K. Clark, *Waging Modern War: Bosnia, Kosovo and the Future of Combat* (New York: Public Affairs, 2001), p. 304.

2. The term “unlawful attack” generically applies to a broad series of violations of the 1949 Geneva Conventions (IV), *Convention Relative to the Protection of Civilian Persons in Time of War*, and Part IV of the Additional Protocols (1977), *Protection of Civilian Persons and Populations in Time of War*. These are specific charges under the Statute of the ICTY as “Crime(s) against Humanity,” “Grave Breaches,” or “Violations of the Laws and Customs of War.”

3. Following the 1991-92 Gulf War, some military-law scholars raised significant questions with regard to the allied coalition air operations against the Iraqi power distribution network. Despite the clear military applications of the network, the resulting long-term adverse impact on the Iraqi civilian population led some to question the “dual-use” justification criteria (see William J. Fenrick, “Attacking the Enemy Civilian as a Punishable Offense,” *Duke Journal of Comparative & International Law*, 7 (Spring 1997), 544. Similar issues were again raised after the NATO bombing campaign against Yugoslavia in 1999 with regard to the attack of “dual-use” telecommunications and “environmentally sensitive” petrochemical facilities (see UN, ICTY, *Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia*, 8 June 2000, pp. 19-26 [hereinafter, *Final Report, NATO Bombing*]). The issue of “terror” is being explored in the upcoming case of the *Prosecutor v. Stanislav Galic*, where his allegedly unlawful use of military means against a civilian population resulted in their “terrorization” as a component of a “Violation of the Laws or Customs of War” (ICTY, *Prosecutor v. Stanislav Galic*, Indictment IT 98-29, 26 March 1999; Count One). Undue environmental damage can form the basis for an unlawful attack charge under Article 8 of the draft Criminal Code for the International Criminal Court.

4. Civilian and protected objects as defined by US Army Field Manual 27-10, *Laws of Land Warfare* (Washington: Department of the Army, May 1958, with change dated 15 July 1976), ch. 2, “Hostilities” (sect. 4, “Bombardments, Assaults, and Sieges”; sect. 6, “Treatment of Property During Combat”), ch. 5 (sect. 2, “General Protection of Populations Against Certain Consequences of War”); as well as Protocol One (*Relating to the Protection of Victims of International Armed Conflicts*) and Protocol Two (*Relating to the Protection of Victims of Non-International Armed Conflicts*) of the Geneva Conventions of 12 August 1949, 12 December 1977.

5. These were broadly known as the trials of class “B” and “C” war criminals, which were conducted by low-level military tribunals or courts-martial in the zone of the occupying powers.

6. UN Security Council Resolution 827, 25 May 1993.

7. Article 2 refers to “Grave Breaches of the Geneva Conventions of 1949”; Article 3 refers to “Violations of the Laws or Customs of War”; and Article 5 deals with “Crimes Against Humanity.”

8. Article 8(2)(b)(iv) of the ICC Criminal Statute makes it a criminal act to conduct an “attack [against a legitimate military object] which would cause incidental death or injury to civilians or damage to civilian objects or widespread, long-term, and severe damage to the natural environment and the death, injury, or damage would be to such an extent as to be clearly excessive in relation to the concrete and direct overall military advantage anticipated.” While the US government does not (at present) support the establishment of the International Criminal Court (ICC), this Criminal Statute will undoubtedly form a substantial basis for the generally recognized body of laws and jurisprudence referred to as “the Customary Laws of War,” which the US government does acknowledge (see FM 27-10, ch. 1. See also DOD Directive 5100.77, 9 December 1998).

9. *Final Report, NATO Bombing*.



10. *Prosecutor v. Tihomir Blaskic*, Case Number IT-95-14-T. Judgment issued 3 March 2000 (under appeal).
11. This trial began on 3 December 2001 in The Hague.
12. In reviewing five specific incidents resulting from NATO air attacks, three were determined to be legitimate military attacks despite civilian casualties (Leskovac Railway Bridge, 12 April 1999; the bombing of Serbian radio and TV, 23 April 1999; and the attack on Korisa village, 14 May 1999). The remaining two pertained to inadvertent attacks on nonmilitary targets or objectives.
13. *Final Report, NATO Bombing*, pp. 2-3, paras. 1-4. In a 13 May 1999 speech by Justice Louise Arbour at the launch of the ICC ratification campaign, she noted that by becoming "parties to the conflict" on 24 March 1999, 19 European and North American countries (read NATO) have "voluntarily submitted themselves to the jurisdiction of a pre-existing International Tribunal, whose mandate applies to the theatre of their chosen military operations." See ICTY Press Release, JL/PIU/401E, 13 May 1999, internet, <http://www.un.org/icty>.
14. With respect to the issue of jurisdiction by both the ICTY and the World Court, NATO spokesperson Jamie Shea addressed the issue directly, noting, NATO "obviously recognizes the jurisdiction of these tribunals, but I can assure you, when these tribunals look at Yugoslavia I think they will find themselves fully occupied with the far more obvious breaches of international law that have been committed by Belgrade than any hypothetical breaches that may have occurred by the NATO countries." See 1500 Press Briefing, 17 May 1999, internet, <http://www.nato.int/kosovo/press/p990517b.htm>. To this author's knowledge, US Department of Defense and Department of State officials never publicly addressed the issue, either in the May 1999 time frame or during the public release of the Office of the Prosecutor Committee Report in June 2000.
15. *Final Report, NATO Bombing*, pp. 13-14, para. 28.
16. *Ibid.*, p. 14, para. 29.
17. *Prosecutor v. Tihomir Blaskic*, pp. 4-5. Count 3, "Unlawful attack against civilians"; Count 4, "Attack upon civilian property."
18. *Ibid.*, p. 54, in referring to Article 3 of the Statute of the Tribunal—Violations of the Laws or Customs of War.
19. Fenrick, p. 541.
20. As generally interpreted under international humanitarian law.
21. *Prosecutor v. Tihomir Blaskic*, pp. 209-10.
22. *Prosecutor v. Stanislav Galic*, Prosecutor's Pre-Trial Brief Pursuant to Rule 65ter (E) (i), filed 23 October 2001. A pre-trial brief is a filing on behalf of a party to the case in which the factual or legal submissions of that party are detailed. As such, the filing by the Prosecutor in this case represents her opinion as to how the court might view both the facts and the relevant law.
23. *Ibid.*, paras. 172-76.
24. *Ibid.*, para. 173. Feasible is defined as what is "practicable or practically possible," taking into account all circumstances prevailing at the time, including humanitarian and military considerations.
25. *Ibid.*, para. 175.
26. *Ibid.*, para. 176. Italics added.
27. *Final Report, NATO Bombing*, pp. 33-39, paras. 71-79.
28. *Ibid.*, pp. 30-33, paras. 63-70.
29. *Ibid.*, pp. 39-41, paras. 80-85.
30. US Army, Field Manual 6-20-10, *Tactics, Techniques and Procedures for the Targeting Process* (Washington: Dept. of the Army, May 1996), ch. 2.
31. *Ibid.*, chs. 2, 4.
32. *Ibid.*, ch. 4, p. 4-2.
33. *Ibid.*, ch. 4, p. 4-16.
34. *Ibid.*, ch. 2, p. 2-2.
35. US Army, Field Manual 34-130, *Intelligence Preparation of the Battlefield* (Washington: Dept. of the Army, July 1994).
36. FM 6-20-10, ch. 4, p. 4-16.
37. US Army, Field Manual 3-06, "Urban Operations" (initial draft), ch. 7, "Legal Support."
38. US Army, Field Manual 27-100, *Legal Support to Operations* (Washington: Dept. of the Army, September 1999), ch. 5, "Legal Support in War."
39. Department of Defense, Report to Congress, *Kosovo/Operation Allied Force After Action Report (U)* (Washington: DOD, 31 January 2000). In Part V, "Intelligence and Targeting Support, Needed Improvements," the Department of Defense specifically noted this vulnerability with respect to the dynamic targeting process and the rapid collection and dissemination of "no-strike target information to avoid collateral damage" (p. 56).
40. *Ibid.*, pp. 76-77. In assessing the battlefield utility of Task Force Hawk during the Kosovo conflict, the Department of Defense candidly noted that the "Army Tactical Missile Systems (ATACMS), deployed with TF Hawk to engage deep targets and suppress enemy air defenses, were never used due to collateral damage concerns."

# Posse Comitatus and Nuclear Terrorism

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Few constraints, if any, remain on what terrorists are capable of and willing to do. In the past decade terrorists have released sarin gas on a Tokyo subway, buried radiological materials in a Moscow park, delivered anthrax through the US mail, and killed thousands in a well-coordinated suicide attack on the World Trade Center and the Pentagon. Terrorists have proven themselves to be both more bloodthirsty and more innovative than previously imagined. The possibility that state sponsorship of these groups could include providing them with weapons of mass destruction (WMD) cannot be ignored. In such a world it no longer seems implausible to discuss the terrorist use of nuclear weapons.

The federal government recognizes the threat of WMD terrorism within the United States and has been earnestly preparing to combat it since at least 1995. However, many questions remain regarding the military's role in domestic terrorist incidents—the current debate over instituting a commander-in-chief (CINC) for homeland security is only one example. As long as the federal bureaucracy defines terrorism as a law enforcement issue rather than a national security issue, the Department of Defense faces considerable legal limits on its ability to act to counter domestic terrorism. While these restraints are significant impediments to DOD's response, the principles enshrined in Posse Comitatus and in the federalist system are, nevertheless, necessary guarantors of American democracy that should not—and need not—be violated, even in a national emergency.

The likely federal response to a nuclear incident currently suffers from conflicting and confusing guidance that is dependent on too many external factors to be timely and therefore effective. In the end, however, the federal response would be almost totally dependent on the Defense Department for its resolution. Given the legal limits placed on DOD's actions, this situation is a

disaster waiting to happen. As Juliette Kayyem, executive director of Harvard's Executive Session on Domestic Preparedness, has remarked, "In a terrorist attack, this confusion could produce at least two unwanted outcomes. First, it could cause institutional inertia, leading ultimately to more deaths and even greater destruction. Second, it could give rise to overreaction and fear, resulting in unnecessary uses of power."<sup>1</sup>

Although it may be possible to improve the response capabilities of civilian agencies (for example, the FBI's Critical Incident Response Group), the reality of a military response in an emergency cannot be denied. Therefore, it is necessary to expand DOD's legal authority to act in a domestic nuclear terrorist incident, but without violating important American principles of government. The best way to accomplish this is through an expansion of DOD's ability to declare a National Defense Area (NDA) in dealing with nuclear incidents.

### ***Constitutional and Legal Limitations***

The most fundamental limitation placed on the military's actions in domestic affairs is the well known but poorly understood Posse Comitatus Act of 1878.<sup>2</sup> Originally intended "to end the use of federal troops to police state elections in former Confederate states,"<sup>3</sup> this Reconstruction Era law is used today to keep the military out of domestic law enforcement. This restriction was one of the principal issues in the investigation of the military's involvement in the Waco disaster and continues to bedevil DOD domestic counterdrug and counterterrorist operations.

However, Posse Comitatus is not the absolute prohibition that many consider it to be.<sup>4</sup> A rather significant loophole is written directly into the law:

*Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than \$10,000 or imprisoned not more than two years, or both.*<sup>5</sup>

Thus, almost any presidential decision or congressional legislation can circumvent Posse Comitatus rather easily.<sup>6</sup> In fact, "the trend during the 1990s has been for the federal government to erode the prohibitions of the Posse Comitatus Act in order to meet a variety of modern law enforcement challenges."<sup>7</sup> Significant recent exceptions to the act have included disaster relief operations under the Stafford Act,<sup>8</sup> the "drug exception" authorized by Congress to fight the "war on drugs,"<sup>9</sup> immigration enforcement operations along the Mexican border,<sup>10</sup> and

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the military assistance provided to state and local governments under the Domestic Preparedness Program.<sup>11</sup>

Most disturbing is the tendency to ignore Posse Comitatus restrictions during emergencies (real or simply perceived). Political pressure to “do something” too often results in military involvement in domestic affairs. In the words of another writer, “The fact is that the political interest in stopping drug and alien smuggling is currently greater than the concern as to whether the military is being injected into a traditional civilian law enforcement role contrary to the principles upon which the Posse Comitatus Act was founded.”<sup>12</sup> After the attacks on 11 September, uniformed troops became regular fixtures at the nation’s airports, military overflights of our major cities was accepted and even welcomed, and Navy ships were dispatched off the coasts of Washington, D.C., and New York City. The same writer has noted that “through a gradual erosion of the act’s provisions over the past twenty years, Posse Comitatus today is more of a procedural formality than an actual impediment to the use of US military forces in homeland defense.”<sup>13</sup>

Although Posse Comitatus as a matter of law may be rapidly weakening, the principles embodied in the act serve an important and essential role within the American constitutional system. Even during a domestic nuclear terrorist incident, further erosions of Posse Comitatus are neither necessary nor advisable. Advocates of an expanded military role correctly note that many of the homeland defense missions they envision for the Army have a firm constitutional basis, including the Preamble’s call to “insure domestic tranquility” and “provide for the common defense.”<sup>14</sup> However, these analysts sometimes fail to acknowledge the Founding Fathers’ significant concerns regarding the effects of a large standing army on a democratic government. As evidenced by the Second and Third Amendments to the Constitution, the Framers clearly preferred a small standing army to be augmented by a “well-regulated militia” in times of crisis over a larger, permanent military force. George Washington, the first American Commander-in-Chief, endorsed a standing army only under limited conditions: “‘Altho’ a large standing army in time of peace hath ever been considered dangerous to the liberties of a country, yet a few troops, under certain circumstances, are not only safe, but indispensably necessary.”<sup>15</sup> The Anti-Federalists went further, calling standing armies “that bane to freedom, and support of tyrants, and their pampered minions; by which almost all the nations of Europe and Asia, have been enslaved.”<sup>16</sup>

Despite the Founding Fathers’ preference for them, reliance upon slow-forming militias for national defense is obviously no longer possible from a strategic standpoint in the modern world. This fact, however, makes Posse Comitatus even more important, rather than less. The existence of a large standing army in a democratic nation requires significant restrictions to be placed upon the military’s domestic role for the sake of both the government and the military. As Air Force Colonel Charles Dunlap has remarked, “There are rela-

tively few modern examples where systematic use of the military to meet internal security threats has been good for democracy or, for that matter, the military itself.”<sup>17</sup> The absence of restrictions on the military runs the risk of jeopardizing democratic institutions and of dragging the military away from its principal mission of defending the nation and into domestic politics. Thus, Posse Comitatus and the principles it embodies are more than “merely legal bars that could be corrected by additional legislation.”<sup>18</sup> There is nothing about Posse Comitatus that needs to be “corrected” except, perhaps, to strengthen it.

Ironically, probably the greatest proponent of continuing such restrictions on the US military is the military itself. DOD regularly resists further erosion of Posse Comitatus even as the Congress and, to a lesser extent, Presidents have called upon DOD’s impressive capabilities to fight everything from the war on drugs to the weather. No doubt DOD’s reluctance is based as much on a desire to husband resources as it is on a desire to honor certain principles, but the military is definitely the most consistent opponent of further military involvement in law enforcement affairs. In any event, as noted by Ms. Kayyem, “Neither concern about the public response to such an increased role, nor the Department of Defense’s historical reluctance, however, stand as a legal bar to the use of the military.”<sup>19</sup>

### ***“I’m from the government and I’m here to help.”***

The assumption that the federal government could automatically and easily step in and resolve a domestic nuclear terrorist incident is mistaken. Law enforcement (including responses to terrorism) is fundamentally a local issue to be dealt with by city, county, and state officials. The role of the federal government in such a local concern is justifiably limited by the federalist structure of the American system of government. As the Tenth Amendment makes clear, the states and the people retain all powers not specifically delegated to the federal government by the Constitution.<sup>20</sup> Thus, the presumption that federal agencies have the ability, even the right, to take command of a local situation just because it is deemed important by Washington rests on shaky ground.

Virtually all federal response plans attempt to finesse this issue by assuming local officials have asked for federal help, usually by the governor or the President declaring a state of emergency. However, when applied to a military response to a nuclear terrorist incident, this assumption runs into several potential difficulties. While it is highly unlikely any governor would believe his or her state has the resources to handle such an incident on its own, numerous factors may complicate and slow a federal response precisely when such delays can least be tolerated.

It is entirely plausible that the federal government would receive a nuclear terrorist threat first (for example, via intelligence channels) and local officials might not even be aware they should be asking for federal help. While

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federal officials have a moral obligation to inform their local counterparts in such a situation, “federal authorities are not required—indeed, in some cases they are prohibited from doing so—to notify other federal, state, and local officials about potential terrorist attacks.”<sup>21</sup> State and local officials, for their part, might hesitate to inform the federal government (or to authorize a federal response once informed) if the threat is at all questionable in nature, due to fears of inciting mass hysteria without sufficient reason. As Fred Iklé has noted, “Local officials at the state, county, or municipal level who are reluctant in a crisis to relinquish local assets for regional or national purposes may exploit unclear authorities to delay action.”<sup>22</sup>

The local authorization of a military response is another potential concern. While attempting to keep an already tense situation under control, few state and local officials would relish the thought of the military rolling into town with weapons at the ready. Moreover, asking for federal help after a disaster (when the Army shows up with shovels and sandbags, rather than M-16s) is far different from authorizing a military response in an as-yet-unresolved crisis in which the possibility for disaster remains an open question.

This tension between the various levels of government is a fundamental and important precept of American governance. However, in an emergency situation with so much at stake, exceptions can and will be made. As long as the federal government remains the only entity capable of responding to a nuclear terrorist incident, the federal government is likely to retain the authority to act with or without local acquiescence. Assuming this as a practical matter is, however, unacceptable. Such a policy—and the legal authority to carry it out—needs to be made clear before an incident occurs. The alternative could have dire consequences for the American system.

### ***Possible Repercussions***

A nuclear terrorist incident—regardless of outcome—would garner massive public attention. If, as would be expected, the military became involved, that attention would only increase. The potential legal and political repercussions warrant serious thought in advance. As Colonel Thomas Lujan, the Staff Judge Advocate for US Special Operations Command, has pointed out:

A major terrorist incident that requires the active participation of the armed forces on a domestic battlefield . . . will become the target of scrutiny unparalleled in the American experience. The level of media interest will be commensurate with that accorded to Waco, Ruby Ridge, or the Oklahoma City bombing. Additionally, our governmental investigative agencies will be galvanized, with the FBI, as the lead federal agency, defining the site as a crime scene (under current rules) and trying to conduct a complete forensic workup on all weapons and individuals involved. The Department of Justice probably will review the procedures of the FBI. These reviews will occur even in the context of a perfect operation. If it is found not to be perfect, one can rest assured that a DOD blue-ribbon panel will be appointed to get to the bottom of the story. And notwithstanding all that scrutiny, it is highly likely that Congress will see fit to hold protracted hearings on the matter. Finally, in our society the prospect of criminal and civil litigation must also be expected.<sup>23</sup>

Thus, even a "perfect operation" would be subject to unprecedented scrutiny. Once a domestic nuclear terrorist incident has been resolved, this examination will focus on two issues above all others: the success of the operation and the legality of the response. Success is defined simply as preventing the detonation of the nuclear device. Legality involves keeping the operation on firm constitutional and legal grounds.

The review of a best-case scenario—in which DOD prevented detonation while acting within its legal authority—would most likely revolve around the terrorists themselves and focus on how they were able to acquire their weapon and get it into the United States. All in all, that would be a relatively painless procedure for the military that would likely result in increased funding for any additional responses to future incidents and possible expansion of legal authority to react again. This expanded authority, however, could draw DOD deeper into domestic counterterrorism and law enforcement responses, a responsibility that the military neither needs nor wants.

A successful, but illegal operation—in which DOD prevents detonation, but goes beyond its legal authority in doing so—could ultimately have the same effect. Although the military would no doubt be subjected to significant criticism and possible censure for crossing a legal boundary, the success of the mission might cause the military's authority to be expanded in the hope of repeating the success without breaking the law during the next crisis.

An operation in which DOD acted entirely within its legal authority, but failed to prevent detonation of the device could have a negative consequence of a different nature. If the military shows itself incapable of responding to a nuclear incident effectively, the responsibility could fall to other, less-capable federal assets, thus jeopardizing future responses. If, on the other hand, the military is believed to have failed as a result of excessive legal limits placed upon it, DOD's authority might be unnecessarily expanded.

Finally, the worst possible scenario—an illegal response by DOD that nevertheless results in a detonation—could combine the worst elements of the

above with even more serious consequences. At the extreme (and an unplanned nuclear detonation within the United States is no doubt extreme), the President who authorized a military response of questionable legality that failed to prevent a nuclear detonation would be forced to take full responsibility for the illegal act. He might even be forced by public or political pressure to resign.

Colonel Lujan has argued that legal concerns about a military response in domestic affairs are misplaced:

Strategic leaders can take solace in the lessons learned from military participation in domestic disaster relief, for the record indicates that legal niceties or strict construction of prohibited conduct will be a minor concern. The exigencies of the situation seem to overcome legal proscriptions arguably applicable to our soldiers' conduct. Pragmatism appears to prevail when American soldiers help their fellow citizens.<sup>24</sup>

However, he fails to consider the possibility that the military itself might actually be blamed for causing the disaster, by accidentally causing or simply failing to prevent a nuclear detonation. In such a situation, "pragmatism" would appear to be an exceedingly weak foundation upon which to base life-and-death decisions with national and international ramifications. The possibility of blame—moral, legal, and political—being attached to everyone from the Commander-in-Chief to the troops in the field is all too real. As Ms. Kayyem has written, "The cost of ignoring the law, of having an 'apologize later' policy, would only further a terrorist's goal of wreaking havoc."<sup>25</sup> Such a policy also does nothing to help those currently planning the federal response.

### ***DOD's Response to Nuclear Terrorism***

The prevailing unclassified Department of Defense authority on domestic nuclear terrorism is DOD Directive 3150.5, "DOD Response to Improvised Nuclear Device (IND) Incidents."<sup>26</sup> This directive assigns the various DOD elements their responsibilities during such a response. Most important, the directive assigns the Assistant Secretary of Defense for International Security Affairs (since changed to the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict [ASD/SOLIC]) responsibility as the DOD Executive Agent. As such, ASD/SOLIC is charged with "establishing IND response policy and . . . providing guidance to the services and DOD agencies" and coordinating "interdepartmental exercises and operations."<sup>27</sup> Each of the three major services is also tasked to "provide a trained response team of EOD [explosive ordnance disposal] personnel and other required support for responding to IND incidents" anywhere in the world.<sup>28</sup>

What the directive does not make clear is which military units would actually respond to a nuclear terrorist incident within the United States. The Army has been assigned as executive agent for domestic counterterrorism and



would seem the logical choice. According to open-source DOD documents, this mission falls to the Army's 52d Ordnance Group (EOD) which:

Provides military explosive ordnance disposal (EOD)/bomb squad units to defeat or mitigate the hazards from conventional, nuclear, or chemical military munitions and weapons of mass destruction (WMD) throughout [the continental United States] as requested by local, state, [and] federal law enforcement or military authorities.<sup>29</sup>

However, as evidence of the conflicting guidance given to response units, the classified Chairman of the Joint Chiefs of Staff Contingency Plan that addresses DOD's counterterrorism policies assigns IND "render safe" responsibilities to a Joint Special Operations Task Force. Thus, even within a purely military response, there is the possibility of conflicting authorizations.

Whatever its response to domestic nuclear terrorism, DOD would not likely act alone. Rather, the military would act with and in support of other federal agencies, principally the Department of Energy and the Federal Bureau of Investigation.

### ***DOD Support to Other Federal Agencies***

The federal response to a terrorist incident with an improvised nuclear device was apparently not given serious thought until the 1970s. One early incident occurred in May 1974, when "the FBI alerted the Atomic Energy Commission [AEC, a precursor to the Department of Energy (DOE)] to a reported [nuclear] terrorist threat in Boston."<sup>30</sup> Fortunately, this threat turned out to be a hoax (a 14-year old boy was attempting to extort \$1 million from the US government). However, the poor response of the AEC (it reportedly took between 12 and 15 hours to move all of the required personnel and equipment from Las Vegas to Boston) proved the need for greater planning and coordination.<sup>31</sup> The Nuclear Emergency Search Team (NEST) was created in early 1975 in an attempt to prevent a repeat of that poor performance.<sup>32</sup>

Although housed in DOE (or its precursors), NEST has always relied upon the Defense Department to perform the actual render safe procedures in a nuclear incident.<sup>33</sup> According to one of the original organizers of the NEST, Mahlon Gates, DOE is responsible for finding, identifying, and assessing the device, but "the Army's EOD teams are to provide access for diagnostics and perform the render safe."<sup>34</sup> While DOD will perform the required render safe procedures, the military remains heavily dependent on the nuclear expertise within DOE in designing those procedures. A recent DOE brochure on the NEST program describes the current joint DOE/DOD response as follows:

The ultimate goal in resolving a nuclear terrorism crisis is to keep the terrorist device from producing a nuclear yield. This involves special explosive ordnance disposal (EOD) procedures conducted by highly-trained technical personnel. DOE

Joint Technical Operations Teams [JTOT] have been designated to work with military EOD teams during all phases of a crisis response.<sup>35</sup>

According to former DOD and current DOE official James McDonnell, the JTOT “provided not only the capability to render safe a [nuclear] device, but the team also could be tailored to the specific mission and quickly deployed.”<sup>36</sup> John Gordon, administrator for nuclear security at the National Nuclear Security Administration (NNSA), recently offered this description of JTOT in testimony before Congress:

NEST Joint Technical Operations [Team] components support DOD and Federal Bureau of Investigation explosive ordnance disposal personnel in rendering safe a nuclear or radiological [weapon of mass destruction]. These operations may be conducted worldwide and in a non-permissive or hostile environment.<sup>37</sup>

Although JTOT can support either DOD or the FBI, the FBI itself still relies upon the Department of Defense to perform nuclear render safe missions.

The FBI is responsible for prosecuting violations of the Atomic Energy Act of 1954, which includes nuclear terrorism. Current US government policy for counterterrorism is based upon Presidential Decision Directive 39 (PDD-39). The FBI has been the lead federal agency for crisis management of domestic terrorism since at least 1982,<sup>38</sup> and PDD-39 reaffirmed that responsibility.<sup>39</sup>

The FBI, however, has always looked to DOD to perform the render safe procedures on a nuclear device. A series of memoranda of understanding and interagency agreements over the past three decades makes DOD’s lead role abundantly clear.<sup>40</sup> The more recent *Terrorism Incident Annex to the Federal Response Plan* demonstrates that this situation has not changed:

As directed in PDD-39, the Department of Defense will activate technical operations capabilities [i.e., render safe procedures] to support the federal response to threats or acts of WMD terrorism. DOD will coordinate military operations within the United States with the appropriate civilian lead agency(ies) for technical operations.<sup>41</sup>

As the assigned lead federal agency, the FBI is attempting to strengthen its abilities to respond to nuclear terrorism. The FBI has added personnel from DOE and the Army to its staff at the Hazardous Devices School (its bomb technician training center) to teach “local bomb technicians some basic principles of nuclear, radiological, chemical, and biological device construction and operation.”<sup>42</sup> Once properly trained, these local bomb techs can be issued a radiation pager so that “when a bomb technician approaches a device, he or she will be able to immediately determine if it contains nuclear material” and alert the FBI.<sup>43</sup>

The FBI has “approximately 100 special agents” with the proper training as bomb technicians and the required security clearances to allow them access to nuclear weapon design information that could enable them to augment the local bomb tech’s response.<sup>44</sup> However, neither the local bomb tech

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nor the FBI special agent is expected to render the device safe. The additional training and equipment is all designed to identify and assess a nuclear device and then “establish communications with the national response teams [i.e., the military EOD units] to ensure that the information collected is passed to the scientific teams [i.e., DOE] for further study.”<sup>45</sup> Thus, all of the additional preparations—while clearly valuable and worthwhile—do not alter the basic reality of a military response.

As the above demonstrates, despite significant roles assigned to the FBI and DOE, the entire federal response to a domestic nuclear terrorist incident boils down to a military EOD team which, by virtue of being a DOD asset, may not have the legal authority to act in some cases.

### ***Responding to Accidents and Emergencies***

Although DOD remains a supporting agency (albeit a very important one), during a domestic nuclear terrorist incident, there are radiological incidents in which DOD can assume lead federal agency responsibilities. These incidents are covered by DOD Directive 3150.8, “DOD Response to Radiological Accidents”<sup>46</sup> (essentially DOD’s nuclear consequence management document). This directive “promulgates DOD policy and planning guidance to implement” the *Federal Radiological Emergency Response Plan* (FRERP) and “continues to authorize publication” of the *Nuclear Weapon Accident Response Procedures (NARP) Manual*.<sup>47</sup> Each of these documents provides far more detail than the directive itself.

The FRERP describes the roles and responsibilities of all federal agencies that may be required to participate in a radiological emergency. Specifically, the FRERP “covers any peacetime radiological emergency that has actual, potential, or perceived radiological consequences within the United States . . . and that could require a response by the federal government.”<sup>48</sup> However, the FRERP does not address the possibility of nuclear terrorism directly. While admitting that terrorism is a “complicating dimension” requiring “specialized technical expertise/actions,” the FRERP nevertheless argues that “the coordinated response to contain or mitigate a threatened or actual release of radioactive material would be essentially the same

whether it resulted from an accidental or deliberate act.”<sup>49</sup> This statement shows the bias (as does most of the FRERP) toward consequence management, despite the fact that the FRERP is also intended to include “potential or perceived radiological consequences.” This bias most likely results from the fact that the FRERP is a product of the Federal Emergency Management Agency, the lead federal agency for consequence management, and it shows, at least in part, the fuzziness of the line between crisis and consequence management in many cases.

By comparison, the *NARP Manual* is written specifically for the Department of Defense in order to “prepare for and respond to a radiological accident or event” and provide “a framework for DOD elements responding to non-DOD radiological events under the FRERP or interagency support agreements.”<sup>50</sup> As such, it is more clearly a consequence management document than is the FRERP. The FRERP, however, most clearly explains the circumstances under which DOD can be declared the lead federal agency.

According to the FRERP, “DOD will be the [lead federal agency] if the emergency involves one of its facilities or a nuclear weapon in its custody.”<sup>51</sup> In such a case, DOD can declare a National Defense Area around the device and effectively federalize the property it needs for the duration of the emergency.<sup>52</sup> The FRERP defines a National Defense Area as:

An area established on non-federal lands located within the United States, its possessions or its territories, for safeguarding classified defense information or protecting DOD equipment and/or material. Establishment of a National Defense Area temporarily places such non-federal lands under the effective control of the Department of Defense and results only from an emergency event. The senior DOD representative at the scene shall define the boundary, mark it with a physical barrier, and post warning signs. The landowner’s consent and cooperation shall be obtained whenever possible; however, military necessity shall dictate the final location, shape, and size of the [area].<sup>53</sup>

This is clearly an effective and necessary tool in the event of an emergency involving a US weapon. Once the area in question has been federalized, Posse Comitatus restrictions and issues of states’ rights would be neutralized and the military would be able to act without those legal impediments. Moreover, given that the National Defense Area “results only from an emergency event” and only “temporarily” federalizes the area in question, once the emergency subsides (and the nuclear device is rendered safe and removed) the land reverts immediately to the original owner.

However, this mechanism would not be applicable in the case of a former Soviet “loose nuke” or a completely improvised terrorist device that did not contain any DOD material. The FRERP makes clear that DOD is the lead federal agency only if the incident occurs on DOD property or involves DOD materials. In all other cases, DOD is not the lead federal agency, and declaring a National Defense Area is not an option.

## *Conclusions*

Current US policies and laws are not properly aligned with the possibility of nuclear terrorism. The Department of Defense possesses the technical capability, but not the legal authority, to act as it needs to in most situations. Confusion over which level of government is authorized to act and which federal agency is, in fact, the lead federal agency could have catastrophic consequences during a domestic nuclear terrorist incident. As the National Commission on Terrorism has warned, "There is a risk that, in preventing or responding to a catastrophic terrorist attack, officials may hesitate or act improperly because they do not fully understand their legal authority or because there are gaps in that authority."<sup>54</sup> As a result, it is necessary to expand DOD's legal authority, but such action should be taken advisedly in calm deliberation rather than later in the middle of a crisis.

The practical effect of the current policy creates an armed FBI team to resolve the tactical situation, followed closely by an unarmed military EOD technician to perform the render safe procedures, who is in turn supported by DOE scientists back at the labs. However, there are inherent difficulties in attempting to supplant the FBI for DOD and vice versa in tactical situations. The two agencies, while both authorized to use deadly force, do so under an entirely different set of rules. The FBI essentially used military rules of engagement (ROE) of "shoot on sight" at Ruby Ridge and paid the price for it. At the same time, national leaders cannot expect the military to operate under law enforcement rules of engagement even when nominally acting in a law enforcement role. As Colonel Lujan has noted, "Any military forces authorized by the President to restore domestic tranquility in terrorist incidents must be prepared to operate under military ROE."<sup>55</sup>

The current system of making "practical" exceptions to policy and laws is unacceptable. As one analyst put it,

Outdated and inflexible American legislation has produced a patchwork consisting of constitutional and statutory exceptions so that the realities of domestic operations can be performed. . . . The potential consequences of this approach include a convoluted command and control structure, decreased response time, and continuity-of-operations problems; it also leaves the federal response vulnerable to exploitation by the adversary.<sup>56</sup>

Conversely, clear lines of legal authority to respond to a nuclear terrorist incident have considerable deterrent value against the potential nuclear terrorist.<sup>57</sup>

The current response is too dependent on too many factors, including the ownership of the land on which the device is located, the source of the radiological materials in the device, the request for federal assistance from a state, and the coordination of responsibilities among various federal agencies.<sup>58</sup> As the FRERP explains:

In the event of an unforeseen type of emergency not specifically described in this plan [i.e., terrorism] or a situation where conditions exist involving overlapping responsibility that could cause confusion regarding [the lead federal agency] role and responsibilities, DOD, DOE, EPA, NASA, and NRC will confer upon receipt of notification of the emergency to determine which agency is the [lead federal agency].<sup>59</sup>

Once a nuclear device has been discovered within the United States, the time has long since passed to debate such issues or address legal prerogatives. However, running roughshod over the Constitution is not the answer, even in a crisis. A far better solution is to provide for a reasoned, streamlined response that enables the President to act quickly, decisively, and legally regardless of the circumstances of the incident.

The authority of the President and, through him, the Department of Defense, to declare a National Defense Area should be expanded to include the site (or believed site) of any device credibly assessed to contain radiological materials anywhere within the United States. The FBI and DOE already have in place a well-established threat assessment structure that analyzes behavioral, operational, and technical aspects of a given threat. This system is used to determine when a threat is credible enough to warrant deploying the NEST and can be used to determine the proper time to declare a National Defense Area and deploy military assets. Using the existing FBI and DOE structure will also require civilian agencies to agree that a threat requires military involvement before DOD can respond and will prevent military units from claiming nuclear terrorism National Defense Areas on their own authority and without proper assessments.

Rather than creating some new authority, or changing existing Posse Comitatus or federalist restrictions, it would be better to expand existing authority to an additional, emergency-only situation that has been fully vetted in the courts. Such a change would eliminate current legal restrictions placed upon DOD with minimum disruption to existing laws and principles and without raising excessive concerns about the expansion of DOD authority into domestic affairs. Military officials should support this modification as the best way to maintain Posse Comitatus limitations while permitting the necessary military response.

The United States already envisions a uniform response using its DOD EOD teams. Now the nation should create a uniform authority for that response. Most important, granting DOD expanded authority to declare National Defense Areas in nuclear terrorist incidents will make all Americans safer.

#### NOTES

1. Juliette N. Kayyem, "U.S. Preparedness for Biological Terrorism: Legal Limitations and the Need for Planning," BCSIA Discussion Paper 2001-4, ESDP Discussion Paper ESDP-2001-02, John F. Kennedy School of Government, Harvard University, March 2001, p. 1.

2. Black's Law Dictionary defines "posse comitatus" as "the power or force of the county. The entire population of a county above the age of fifteen, which a sheriff may summon to his assistance in certain cases as to aid him in keeping the peace, in pursuing and arresting felons, etc." Quoted in Eric V. Larson and John E. Peters, *Preparing the U.S. Army for Homeland Security: Concepts, Issues, and Options*, RAND MR-1251/A (Santa Monica, Calif.: RAND, 2001), Appendix D, "Overview of the Posse Comitatus Act," p. 243.

3. Ibid.

4. For example, the commander of the Joint Task Force that responded to the Los Angeles riots in 1992 wrongly believed his troops were unable to engage in any law enforcement activities. See Thomas R. Lujan, "Legal Aspects of Domestic Employment of the Army," *Parameters*, 27 (Autumn 1997), 90.

5. U.S. Code, Title 18, sec. 1385, emphasis added. The law originally included only the Army. According to Lujan, the Air Force was added in 1956. According to Larson and Peters, the Navy and Marine Corps were made subject to the law by DOD Regulation (32 C.F.R. sec. 213.2, 1992).

6. Paul Schott Stevens, "U.S. Armed Forces and Homeland Defense: The Legal Framework," Center for Strategic and International Studies, Washington, D.C., October 2001, p. 23.

7. Craig T. Trebilcock, "Posse Comitatus—Has the Posse Outlived its Purpose?" Center for Strategic and International Studies Homeland Defense Working Group, Washington, D.C., March 2000, p. 2.

8. Lujan, pp. 83-85.

9. Larson and Peters, pp. 244-45.

10. Trebilcock, "Posse Comitatus—Has the Posse Outlived its Purpose?" p. 2.

11. This assistance was provided as part of the Defense Against Weapons of Mass Destruction Act of 1996. For a more complete list, see General Accounting Office, *Military Personnel: Full Extent of Support to Civil Authorities Unknown but Unlikely to Adversely Impact Retention*, GAO-01-9 (Washington: GAO, January 2001), Appendix II, "Compendium of Major Legal Authorities Authorizing DOD Support to Civil Organizations," pp. 23-31.

12. Trebilcock, "Posse Comitatus—Has the Posse Outlived its Purpose?" pp. 2-3.

13. Craig T. Trebilcock, "The Myth of Posse Comitatus," *Journal of Homeland Defense*, 27 October 2000, p. 1.

14. Larson and Peters, pp. 5-6.

15. George Washington, "Sentiments on a Peace Establishment," 2 May 1783, as quoted in Gregory J. W. Urwin, "The Army of the Constitution: The Historical Context," in . . . *to insure domestic Tranquility, provide for the common defence*. . . , ed. Max G. Manwaring (Carlisle, Pa.: US Army War College, Strategic Studies Institute, 2000), p. 34.

16. "Objections by a Son of Liberty," *New York Journal*, 8 November 1787, as quoted in Urwin, p. 41.

17. Charles J. Dunlap, Jr., "Where Domestic Security and Civil Liberties Collide," in Manwaring, p. 210.

18. Fred C. Iklé, "Defending the U.S. Homeland: Strategic and Legal Issues for DOD and the Armed Services," Center for Strategic and International Studies Homeland Defense Working Group, Washington, D.C., January 1999, p. 17.

19. Kayyem, p. 11.

20. The Tenth Amendment states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." *US Constitution*, 17 September 1787. See also Kayyem, p. 4.

21. Kayyem, p. 16.

22. Iklé, p. 18.

23. Lujan, p. 94.

24. Ibid., p. 85.

25. Kayyem, p. 4.

26. An IND is defined as "a device incorporating radioactive materials designed to result in the dispersal of radioactive material or in the formation of a nuclear-yield reaction. Such devices may be fabricated in a completely improvised manner or may be an improvised modification to a US or foreign nuclear weapon" in DOD Directive 3150.5, "DOD Response to Improvised Nuclear Device (IND) Incidents," 24 March 1987. It should be noted that this definition covers virtually every possible device including radiological dispersal devices (RDDs), a Russian "loose nuke," or a stolen US warhead.

27. Ibid., p. 3.

28. Ibid., pp. 3-4.

29. Department of Defense, Office of Combating Terrorism Policy and Support, "Combating Terrorism Activities, FY2001," Washington, D.C., 14 January 2000, p. 352.

30. Mahlon E. Gates, "The Nuclear Emergency Search Team," in *Preventing Nuclear Terrorism: The Report and Papers of the International Task Force on Prevention of Nuclear Terrorism*, ed. Paul Leventhal and Yonah Alexander (Lexington, Mass.: Lexington Books, 1987), p. 397.

31. According to Gates, the AEC's preparations were also complicated by multiple, oftentimes-conflicting phone calls from Washington, D.C. Ibid., p. 398.

32. Ibid.

33. Render safe procedures (RSP) are defined as, "The portion of the explosive ordnance disposal procedures involving the application of special explosive ordnance disposal methods and tools to provide the interruption of functions or separation of essential components of unexploded ordnance to prevent an unacceptable detonation" in Department of Defense, *Nuclear Weapon Accident Response Procedures (NARP) Manual*, DOD 3150.8-M (Washington: DOD, December 1999), p. 17.

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35. Department of Energy, "Nuclear Emergency Search Team" brochure, internet, <http://www.dp.doc.gov/emergencyresponse/PDF/nest.pdf>, accessed 25 April 2001.

36. James F. McDonnell, "Local Bomb Squads Bolster Response to Nuclear Terror," *National Defense*, September 1999, p. 38.

37. Testimony of General John A. Gordon, USAF Ret., Undersecretary of Energy and Administrator for Nuclear Security, National Nuclear Security Administration, Department of Energy, before the Committee on Appropriations, United States Senate, 8 May 2001.

38. General Accounting Office, *Combating Terrorism: Federal Agencies' Efforts to Implement National Policy and Strategy*, GAO/NSIAD-97-254 (Washington: GAO, September 1997), p. 39. It is unknown which, if any, federal agency had the lead prior to 1982.

39. The Federal Emergency Management Agency (FEMA) is the lead federal agency for consequence management, and the State Department acts as the lead federal agency for international terrorist incidents. DOD supports the lead federal agency in all cases.

40. "Memorandum of Understanding Between the Energy Research and Development Administration [ERDA] and the Federal Bureau of Investigation for Responding to Nuclear Threat Incidents," 11 June 1976. This memorandum was modified in June 1982 to include DOE (which replaced ERDA) support of the FBI response to non-nuclear Sophisticated Improvised Explosive Devices (SIEDs). The FBI, however, retained responsibility for requesting DOD EOD support as appropriate. See, "Modification to Memorandum of Understanding between the Department of Energy and the Federal Bureau of Investigation for Responding to Nuclear Incidents," June 1982. See also, "Joint Federal Bureau of Investigation, Department of Energy, and Department of Defense Agreement for Response to Improvised Nuclear Device Incidents," 27 February 1980; "Memorandum of Understanding Between the Department of Justice, the Department of Defense, and the Department of Energy for Response to Domestic Malevolent Nuclear Weapon Emergencies," 1991.

41. Federal Emergency Management Agency, *Federal Response Plan, Terrorism Incident Annex* (Washington: GPO, April 1999), p. TI-11.

42. McDonnell, p. 38. See also, FBI, "Five-Year Interagency Counter-Terrorism and Technology Crime Plan: An Excerpt of Strategies for Enhancing Federal Support for State and Local Counter-terrorism Efforts," February 1999.

43. Ibid., p. 39.

44. Ibid.

45. Ibid.

46. Department of Defense, Directive 3150.8.

47. Ibid., p. 1.

48. Federal Emergency Management Agency, *Federal Radiological Emergency Response Plan (FRERP)*, 1 May 1996, p. I-2.

49. Ibid., p. II-3.

50. Department of Defense, DOD 3150.8-M, p. 45.

51. FRERP, "Appendix C: Federal Agency Response Missions, Capabilities and Resources, References, and Authorities," p. C-6.

52. A similar mechanism exists for DOE or NASA to claim a National Security Area during a similar incident.

53. FRERP, "Appendix B: Definitions," p. B-3.

54. National Commission on Terrorism, *Countering the Changing Threat of Terrorism* (Washington: GPO, 7 June 2000), p. 37.

55. Lujan, p. 94.

56. Sean M. Maloney, "Domestic Operations: The Canadian Approach," *Parameters*, 27 (Autumn 1997), 150.

57. Iklé, p. 18.

58. For additional complicating factors, including declarations of a state of emergency, of martial law, and of war, see Iklé, p. 17.

59. FRERP, p. II-3.



# Organizing for Homeland Security

MICHAEL J. HILLYARD

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In their best-selling 1994 business text, *Built to Last: Successful Habits of Visionary Companies*, Professors James Collins and Jerry Porras identify common fundamental principles at the heart of the world's premier lasting corporations.<sup>1</sup> Similarly, in *Bureaucracy: What Government Agencies Do and Why They Do It*,<sup>2</sup> renowned public policy expert James Wilson identifies the principles shared by leading public organizations. Common among both corporate and government successes is a focus foremost on the institution and only secondarily on the specific mission, product, or service provided by the institution. The message these organizations send is that while missions, products, and services may change, institutions endure. Another common theme is people; specifically, people matter in leading institutions. What people believe as core ideologies generation after generation upholds and advances the organization as an institution. Second-tier organizations, both public and private, focus on issues other than the institution—a specific mission to perform, a key product to deliver, a special service to render, a target profit to make. With ideology affixed to other factors and not the institution, a change in any of the factors sends shock waves through the institution, and over the long haul substantial change leads to instability, if not chaos.

The distinction between the institution as what endures, and mission, product, or service as what may someday change, is important as the nation addresses its structure for homeland security. Contemporary missions—border security; coastal protection; counterterrorism; biological, chemical, and nuclear defense; emergency management; among many others—dominate the focus of current policy discussions. How do we defend against this? How do we prepare for that? How do we respond to x? How do we recover from y? In the wake of a national crisis, the immediate threats rightly take center stage over discussions of long-term institutional design. But when the national discussion of homeland

security starts with specific threats for which the nation is unprepared, answers that produce long-term institutional consequences quite naturally follow. Unfortunately, in first asking the specific questions, and then searching for their subsequent answers, the institutional principle of successful organizations is violated. Answers built on czars, realignments of bureaucracies, creation of new bureaucracies, and facilitation of existing federal, state, local, and nongovernmental organizations address the immediate. When framed as answers for threats against which the nation has no coherent response, all such answers hold a certain logic. But all such answers logically solve the wrong question.

Just as leading organizations do, both the federal and national organization for homeland security must provide an enduring answer to a question that most Americans know will never go away: How can the security of the American people and their way of life be institutionalized through its many national capabilities to mitigate, prepare for, respond to, recover from, and learn from threats known and unknown?

If this question is answered with the appropriate institutional response, then the nation can rest assured that its homeland security apparatus will be enduring and effective. Reflecting the enormity of the homeland security challenge, the question itself lacks focus, and justifiably so. The answer's breadth spans a wide variety of contemporary targets, including geography at home and abroad, technology, national symbols, and people; human response resources, including federal, regional, state, and local authorities, non-profit and voluntary organizations, businesses, specialists, and citizens; functional assets, including legal, intelligence, safety, law enforcement, public health, and others; and threats, including foreign and domestic terrorist groups and individuals, foreign conventional powers, rogue regimes, mother nature, disease, and technological disaster. The answer's depth spans the international organization and coalition down to the individual citizen. Yet the vastness of the difficult question paradoxically provides an opportunity to arrive at the appropriately enduring institutional response. Just as leading organizations have difficulty in pinning down a timelessly precise organizational product, service, or mission, so will a lasting homeland security institution have difficulty in addressing a timelessly specific threat for which it is meant to exist, with a key difference being that the homeland security institutional history has yet to be written.

### ***The Federal Homeland Security Institution***

President Bush's establishment of an Office of Homeland Security is an important first step toward what should become an evolving federal institution. As stated in the White House Press Release that introduced the office:

The mission of the office will be to develop and coordinate the implementation of a comprehensive national strategy to secure the United States from terrorist threats or attacks. The office will coordinate the executive branch's efforts to detect,

prepare for, prevent, protect against, respond to, and recover from terrorist attacks within the United States.<sup>3</sup>

The Office of Homeland Security, headed by former Pennsylvania Governor Tom Ridge as the Assistant to the President for Homeland Security, is specifically responsible for coordination of national strategy, detection, preparedness, prevention, protection, response, recovery, incident management, continuity of government, public affairs, legal issues, budgets, and administration associated with the government's anti-terrorism efforts.<sup>4</sup> As a first step toward homeland security institutionalization, President Bush has established the idea that a standing federal office designed for homeland security is critically important to coordinate and facilitate the many resources at the nation's disposal. As a federal institution that will serve the nation throughout the 21st century, the office will need to evolve from its origin as a small coordination staff with responsibility for terrorism-focused facilitation and coordination of all federal departments and agencies, state and local governments, and private industry into a true federal bureaucracy that spans the homeland security spectrum.

Accepting the notion that building a homeland security institution is more advantageous than aligning something short of an institution to counter contemporary threats, the first portion of the answer to the homeland security question is a federal one. Addressed by former Senator Gary Hart, co-chair of the Commission for US National Security/21st Century, before Congress in September 2001, and subsequently in *Time* magazine, Hart asks first how the nation might institutionalize the security of the homeland and only then identifies the federal government as a primary foundation for such institutionalization.<sup>5</sup> His question importantly leads to an expansive definition of homeland security, extending beyond international terrorism to incorporate other threats to the American people, including natural, human, and technological disasters. The linkage is appropriate because so many federal, state, and local systems must address the same response issues for multiple purposes. In just one example among countless others around the country, the Washington, D.C., transportation system is structurally corked by several strategic choke-points that currently prevent a timely citizen emergency exodus. Such an exodus could be required for a host of reasons, only one being international terrorism.

The first part of what could become a hybrid answer to the homeland security question is a federal organization that addresses the truly federal issues of homeland security. While Governor Ridge's close working relationship with President Bush may assure (for this particular Administration) the coordination

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and facilitation expected by the President on a major homeland security issue—terrorism—it is also critically important to institutionalize a federal bureaucracy for the long term out of the many disparate departments and agencies that provide tangential support for homeland security. Although Ridge (and implicitly, the President) says he will have “all the resources I need,” some members of the Administration believe that even Ridge’s relationship and clout with the President will not be enough to realign priorities and missions, even on just the terrorism issue and even in this Administration. One official recently stated that the new office “is being set up for failure.”<sup>6</sup>

A lasting federal organization would appropriately oversee current federal missions and anticipate future missions associated with homeland security. Such missions include but are not limited to protection of the many different points of entry into the United States, intracontinental and intercontinental transportation, emergency and disaster management, and technological security, among others. But, as stated earlier, such missions will change over time. What the federal institution for homeland security can provide is continuity of homeland security purpose on issues of overarching policy, legislation, and executive action as missions change, evolve, and emerge. The key institutional principle to be assured is the need to maintain a standing federal organization that accepts as its charter, whose leadership takes on its shoulders, and whose people adopt as their core ideology, the security of the American homeland. Without a standing, centralizing, galvanizing focus in the federal government, there can be no enduring homeland security institution. Such a focus is created through a federal department that possesses the capability to achieve significant goals: align, coordinate, and reallocate people and resources to high-priority federal missions; create a bureaucratic culture around homeland security complete with a generation of civil servants aligned with its core ideology; argue for and implement federal policy; coordinate with other federal departments as an equal; and facilitate the national network (to be described below) as its nucleus.

### ***Beyond Organizational Behavior: The National Homeland Security Institution***

Where the paths of homeland security and organizational behavior veer is in the sheer enormity posed by the homeland security challenge. The nature of the task, security of the homeland, with its many considerations—size, scale, skills, scope, breadth, depth—necessitates an interorganizational structure. It is impossible to conceive of homeland security being conducted solely by a single organization, even by a hypothesized domestic bureaucracy the size and scale of the Department of Defense. There is simply too much expertise to be garnered, too much potential for redundancy. Conversely, even with the addition of a federal homeland security bureaucracy described by the national security commission and the paragraph above, it is still difficult to imagine a cohesive national homeland security process emerging out of the chaotic coordination that currently exists between and among federal,

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***“Without a standing, centralizing, galvanizing focus in the federal government, there can be no enduring homeland security institution.”***

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state, and local departments and agencies. When state governors, such as Idaho's Dirk Kempthorne, report that his National Guard adjutant-general is not permitted to share certain information with him,<sup>7</sup> it is clear that a deep institutional problem exists, and that the problem is at least in part a federal one. When a local cop wonders why he might need to check for flight manuals as well as drugs in the speeding vehicles he pulls over,<sup>8</sup> it is clear that this problem, while national in scope, is also very much local in implementation. A federally focused institution for national homeland security is not the complete answer.

Even while discussions focused on specific threats reach consensus on the necessity to create some version of a federal institution, they miss the second and equally important foundation of what could evolve as a truly national homeland security institution. The Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction (hereinafter referred to as the Gilmore Commission) recognized the lack of attention paid to state and local levels in the spectrum of preparedness through response and recovery: “We need a national approach, one that recognizes the unique individual skills that communities, states, and the federal government possess that, collectively, will give us the ‘total package’ needed to address all aspects of terrorism.”<sup>9</sup>

As argued for in the Gilmore Commission on its narrowly chartered issue of terrorism, the creation of a federal homeland security institution lays the groundwork for a more comprehensive national institution across the range of homeland security issues, in which the federal government will play only one of the many necessary national roles. When considering the national structure of homeland security, that structure should incorporate the many functional, jurisdictional, and constituency boundaries that the threats cross, and increase the capabilities of the many existing organizations. Functional boundaries include fire, police, legal, public health, military, and aviation, among others. Jurisdictional boundaries include international, federal, state, and local levels. Constituencies include a variety of professional communities, corporations, and what is potentially homeland security's greatest weapon—the American citizen. At the heart of the national institution for homeland security must be the citizen as both the reason for the institution as well as the institution's greatest asset in the form of the citizen-servant. With the citizen at the heart of the institution, the need for

an organizational structure close to the citizen is imperative. As evidenced in the Federal Civil Defense Administration's failure to internalize civil defense in the American mind, a federal bureaucracy will never capably mobilize and manage the information and resources necessary to incorporate and inspire tens of millions of American first-responders and everyday citizens as part of an enduring solution for homeland security.

The only structure capable of shaping jurisdictions, levels, functions, and leaders, managers, experts, first-responders, and citizens into a national homeland security institution is an interorganizational crisis response network. By their nature, interorganizational crisis response networks possess principles in multi-organizational form similar to those of enduring singular organizations. These principles, like those of their organizational counterparts, are timeless and inviolable. They include common network purposes, a singular authority structure, incentives for member organizations, a network macroculture, and an interoperable interorganizational structure.<sup>10</sup> Adoption of these principles in a national homeland security network will provide the second part of America's homeland security hybrid institution.

#### *Common Purposes*

Interorganizational crisis response networks possess fundamental reasons for otherwise disparate organizations to commonly work together. Organizations that form a network arrangement to assume collective responsibilities recognize, support, and approve of the overall purposes for their coming together. Without agreement on such purposes, or if such purposes are imposed on member organizations by an external authority (such as the federal government), a crisis response network will not function optimally. An example of a highly effective public crisis network is one facilitated through the National Interagency Fire Center (NIFC), in which six federal agencies, 50 state organizations, and associated organizations commonly agree to overarching missions and prioritization of resources associated with preparation, response, and recovery related to wildland fires. Networks such as the one coordinated through the NIFC also possess a common understanding of the divisions of organizational labor that support the collective responsibilities. In the NIFC-facilitated network, each member organization understands its role and the roles of other member organizations in support of the wildland fire institution. Each organization also retains its organizational autonomy and separate missions outside the network, and it is the uniqueness of each organization's autonomy as it is brought to bear among the other network organizations that creates exponentially beneficial results when the network functions collectively.

A network for homeland security would provide an opportunity for organizations at its many different levels, from among its many different functions, to come together to address the overarching purposes, roles, and missions associated with their collective responsibility to secure the homeland. Import-

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***“At the heart of the national institution for  
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as well as the institution’s greatest asset.”***

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tantly, the federal homeland security department would sit as only one of the many different member organizations at the proverbial table (albeit a dominant member that would ensure federal policy was implemented, federal monies were spent in accordance with their intended purposes, and other federal departments and agencies were aligned to support network needs).

At the strategic level, President Bush has created an initial structure that provides for the type of interorganizational arrangement that can lead to long-term network success. In the homeland security executive order, the President provided for a Homeland Security Council that will “serve as the mechanism for ensuring coordination of homeland security-related activities of executive departments and agencies and effective development of homeland security policies.”<sup>11</sup> Federal membership includes the parties who possess the authority to speak for the overarching leadership (i.e., the President and Vice President), respective federal functions (i.e., Secretary of the Treasury, Secretary of Defense, Attorney General, Secretary of Health and Human Services, Secretary of Transportation, Director of FEMA, Director of FBI, Director of CIA), and interorganizational coordination, facilitation, strategy, and action (i.e., Assistant to the President for Homeland Security).<sup>12</sup> As is witnessed in other successful networks, the Homeland Security Council provides member organizations with necessary strategic representation to maintain the purposes of the network and coordinate individual organizational roles and responsibilities. Over time, the President might consider adding a state governor, county commissioner, and metropolitan mayor to ensure strategic representation of state and local interests. Also critically important is the President’s directive to provide augmentation by other senior leaders from his Cabinet when their services are deemed necessary. Evolving to mirror the President’s steps at the strategic level, the national institution will need to develop an operational element at the federal level to ensure the council’s intent is followed, and it will also need to develop regional or state-level networks to mirror the components at the strategic level. The network’s common purposes must be realized through all of the levels on which the network will function, which in the case of homeland security is down to the organizations that support individual citizens and first-responders.

### *Authority*

Interorganizational network authority is secure in two forms: operational control and resource allocation. Organizations within a network defer to the network-identified authority in both of these distinct forms of authority. The most pervasive example of operational control is visible in the Incident Command System, which is used in many different crisis management communities. Based on the situation at hand, the network assigns appropriate command and control responsibilities at either operational or tactical levels. In the event of scarce resources, resource prioritization, allocation, and distribution is also centralized in the network, with member organizations willingly submitting individual organizational participation to network authority. As indicated by retired General Barry McCaffrey in just one area of homeland security, there is no hint of such a principle being realized in border security: "At each point of entry on each sector—of our land border, and in every maritime approach—there is no single federal officer in charge."<sup>13</sup>

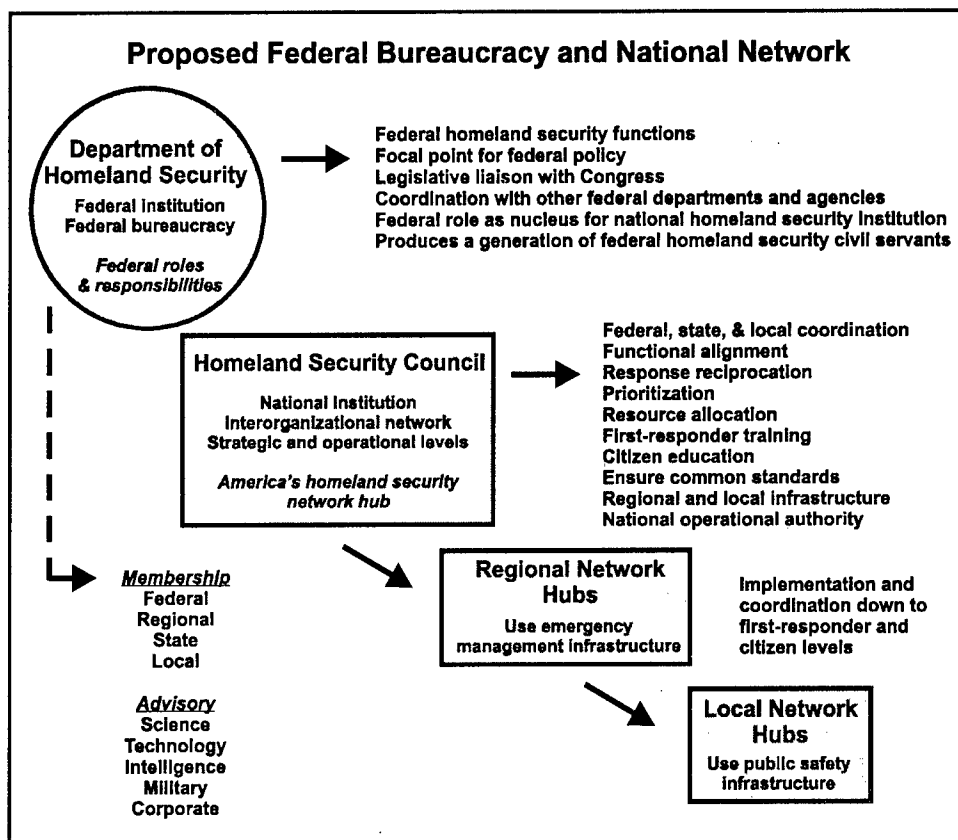
A homeland security network could ensure network operational control through several different means, one being the establishment of a national operational council or operational commander, whereby member organizations are either represented to reach consensus on prioritization and resource allocation, or they submit to singular, shared authority. This authority structure would then be mimicked at regional and local levels to ensure operational responsibility and autonomy to solve problems at every stage in the network.

Included at the operational level, resource allocation would be controlled through the operational authority, but it would be achieved through the evolution of a standard network infrastructure at each level, including identification and cataloging of all the resources at the network's disposal (i.e., people, equipment, supplies, volunteers, business support, experts, etc.), thereby enabling the rapid transition of resources from low- to high-need areas. Both operational control and resource allocation would be facilitated through the network council's establishment of operational standards based on the type, breadth, and depth of the homeland security issue being faced, or the equipment used, or the training required, or whatever else is needed.

### *Incentives*

Networks provide member organizations with the appropriate incentives to join and maintain membership in the network, and such incentives extend well beyond legislative enforcement to participate. Member organizations tend to want to avail themselves of the network's organizational services. Such an atmosphere is created through incentives created in the network such as goodwill, reciprocity agreements, shared training and educational experiences, mutual response assurances, and network budget allocations for services. Federal domination of a homeland security network will not produce the types of incentives necessary to induce willing participation among other levels and functions of government or nongovernmental organizations. Federal participation should exist alongside





other member organizations to reach mutually beneficial ways of participating in network-centric solutions.

An ideal homeland security incentive structure would combine overarching federal policy and subsequent monetary and other resources with common-sense, on-the-ground realities provided through local, state, and functional member representatives. Federal monies would flow through the network in exchange for participation in communizing resources and ensuring the other incentives (e.g., mutual response, submitting to network authority, etc.) listed above.

#### *Macroculture*

Networks themselves take on cultural characteristics that extend beyond the member organizations' singular cultures, and the homeland security network should take on a distinct cultural identity separate from both the federal homeland security institution and the other member organizations such as fire, police, emergency medical, emergency management, and public health. Central factors to network culture include a core ideology, shared training and education, common symbols and experiences, and a common language, among others. Critical to building a network macroculture in homeland security will be its extension to leaders, first-responders, and citizens all over the country. The network should

assume responsibility for the development of doctrine, standards, education, and training for all constituencies involved in homeland security down to the individual citizen level—the nine million first-responders who must be commonly prepared to face homeland security threats, mid-level managers from a wide range of functional expertise, and senior leaders from private and public sectors.

The types of training mirrored in other networks that could apply to homeland security include a wide range of distance education, certification, seminars, wargames, simulations, and scenarios. A culture of homeland security will be realized when every police captain, fire and rescue employee, emergency medical technician, county emergency management director, port authority clerk, regional airport security chief, and county commissioner can personally identify his or her role in the nation's homeland security. Recognizing the need to infuse a pervasive national culture that reaches down to the lowest levels in the effort, the Gilmore Commission called for a national strategy that would include a fundamental restructuring of homeland security training and education opportunities aimed at state and local response officials.<sup>14</sup>

#### *Interorganizational Structure*

Networks possess clearly defined structures, including clear definitions and agreement on what organization fits where, common communications standards, reporting procedures, and intelligence dissemination both up and down the network chain. The structure enables the rapid movement of resources, information-sharing, and mobilization of organizations and people to support network causes. The network structure is typically provided for at the strategic level for mutual establishment of network purposes and priorities, at the operational level for the delivery of those purposes and priorities through actual decisions and movement of national resources, and at the tactical level through operational command and control. Critical to both the vertical and horizontal features of network facilitation are linking pins—individuals who have grown up in the network and possess operational knowledge beyond a single organizational expertise. General McCaffrey identifies the current homeland shortfall when measured against the structural principle: “There is no common organizing scheme to the many federal agencies that are charged with these missions; no integrated intelligence or communications network; no common multiagency infrastructure development plan.”<sup>15</sup>

A properly structured homeland security network, integrated across the whole of America, has the potential to properly prepare and then rapidly mobilize both professionals and citizens in support of one or many homeland security crises at a single point in time. At the operational level, regional network hubs would coordinate national priorities in their region, establish the communications system for organizations in that region, maintain the skills, supplies, and equipment inventories, and provide for regional awareness of how and when organizations and individuals should plug into the network. From the regional level, local-level hubs could provide the same duties at the level closest to most first-responders

and citizens. At every level, the hubs would incorporate the Gilmore Commission's recommendation for functional representation of at least domestic preparedness; intelligence; health and medical; research, development, test, evaluation, and national standards; and management and budget.<sup>16</sup> Since the metropolitan public safety and regional emergency management communities would be member organizations in the homeland security network, a physical infrastructure already exists as a foundation for the interorganizational structure.<sup>17</sup>

### *The Time Is Now*

History and conventional wisdom conspire to create a perception that institutional structures, particularly when dealing with the federal government, take years or even decades to evolve. As the crisis of 11 September illustrates, though, times have indeed changed. Terror has the potential to strike quickly, close to home, at any time, and in any place. Unfortunately, so do many other threats to our homeland and our people, with both terrorist and nonterrorist threats sharing many national response resources.

While homeland security as an enduring institution may take years to mature, there is no excuse to delay the difficult thinking, planning, and political decisionmaking associated with laying its enduring foundation. The citizenry should not have to suffer through a bizarre configuration of temporary arrangements before being provided with an institution for their security in which they will play a leading role. The time to build that structure is now.

### NOTES

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2. James Q. Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It* (New York: Basic Books, 1989).

3. The White House, "President Establishes Office of Homeland Security," Press Release, 8 October 2001.

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5. Gary Hart, "Here's a Better Way to Be Secure," *Time*, 8 October 2001, p. 33.

6. Douglas Waller, "A Toothless Tiger?" *Time*, 15 October 2001, p. 78.

7. Michael Elliott, "A Clear and Present Danger," *Time*, 8 October 2001, p. 37.

8. Ibid.

9. Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, *Toward a National Strategy for Combating Terrorism*, 15 December 2000, internet, <http://www.rand.org/nsrd/terrpanel/>, p. ii, accessed 4 January 2002. (Hereinafter *Toward a National Strategy*.)

10. Michael J. Hillyard, *Public Crisis Management: How and Why Organizations Work Together to Solve Society's Most Threatening Problems* (Lincoln, Neb.: Writers Club, 2000).

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13. Barry McCaffrey, "Challenges to US National Security," *Armed Forces Journal*, October 2001, p. 6.

14. *Toward a National Strategy*.

15. McCaffrey, p. 8.

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# Principles of War on the Network-Centric Battlefield: Mass and Economy of Force

PAUL MURDOCK

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“Economy of Force: Allocate minimum essential combat power to secondary efforts.”

“Mass: Concentrate the effects of combat power at the decisive place and time.”

— US Army Field Manual 3-0, *Operations*, 2001

Mass and economy of force are intimately related principles of war. This article explores the characteristics of this relationship and how new warfighting concepts and capabilities—in particular, network-centric warfare—are likely to change that relationship and even the principles themselves.

Economy of force has the distinction of being one of the most misunderstood and unappreciated principles of war.<sup>1</sup> The confusion as to its meaning is no doubt because of the connotations of the word “economy”; in particular, most of us associate the idea of economy with reducing cost—that is, “economizing.” Hence, some believe that the principle encourages operational commanders to use as little combat power as possible to achieve the mission—that the commander should be frugal.

However, as Bernard Brodie once observed, when originally propounded the concept meant “to suggest shrewd husbandry or usage” of military forces.<sup>2</sup> The commander was to employ effectively *all* available combat power—massing forces to achieve the primary objective while allocating minimum, but all necessary and essential, power to secondary tasks. Hence, the true sense of the concept is well stated in the US Army’s doctrinal Field Manual 3-0, *Operations*: “Economy of force is the reciprocal of mass. It requires accepting prudent risk

in selected areas to achieve superiority—overwhelming effects—in the decisive operation. Economy of force involves the discriminating employment and distribution of forces. Commanders never leave any element without a purpose. When the time comes to execute, all elements should have tasks to perform.”<sup>3</sup> Carl von Clausewitz was also adamant that all forces be used:

If a segment of one’s force is located where it is not sufficiently busy with the enemy, or if troops are on the march—that is, idle—while the enemy is fighting, then these forces are being managed uneconomically. In that sense they are being wasted, which is even worse than using them inappropriately. When the time for action comes, the first requirement is that all parts must act.<sup>4</sup>

### *Shrewd and Judicious Effects*

Justification for employing all forces, and in a calculated or “shrewd” manner, arises from the numerous instances where commanders lost battles at least partly because they failed to do so. For example, in the American Civil War, General Robert E. Lee’s Confederate army defeated General Joseph Hooker’s Federal force at Chancellorsville in 1863 despite Hooker’s large numerical advantage—half the Northern troops never engaged. At sea, the World War II battle of Midway in 1942 is instructive. The Japanese theater commander, Admiral Isoroku Yamamoto, commanded over 160 warships to Admiral Chester Nimitz’s 76; but some of them, including two light carriers, were thousands of miles away carrying out a needlessly elaborate distraction scheme.<sup>5</sup> Arguably, if Yamamoto had massed more assets and more logically arrayed his total force, the Japanese would have won, despite the American signals intelligence advantage and strokes of luck.<sup>6</sup>

The straight fact is that massing forces is not always the best means to effectively employ them. Properly conducted economy-of-force operations can be just as important, or more so. For instance, an operational commander could “practice” economy of force in order to create opportunities. Traditionally, opportunities have been created by the shrewd and balanced dispersion of combat power; such dispersion can compel the enemy to do the same, or to at least adjust the disposition of his own forces. Ideally the enemy’s response facilitates the execution of the commander’s operational idea, making the main attack more effective by allowing a preponderance of combat power at the decisive time and

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place. In short, the units assigned economy-of-force missions may have as significant an influence upon the outcome of a battle as those actually massed at the decisive place. (To be fair to Yamamoto, his Northern [Aleutians] Force had been conceived as a distraction, to lure elements of the weakened US fleet from the Central Pacific, that is, Midway.)

Of course, inappropriate enemy dispersion can be encouraged by more means than just the clever disposition of one's own forces. For example, operational deception might help. During the Persian Gulf War, the United States and the United Kingdom operated amphibious ships and minesweepers in the northern Arabian Gulf, inviting the Iraqis to think there would be an amphibious landing on the beaches of Kuwait. This deception tied up several Iraqi divisions, which were therefore not well positioned to help resist the main coalition attack.

In a different vein, wise economy-of-force tactics can also be the basis of an indirect approach to the ultimate objective, as explained by the 20th-century military theoretician B. H. Liddell Hart.<sup>7</sup> One such option is an advance that employs all of one's forces in several simultaneous, mutually supporting thrusts that can threaten more than one intermediate objective, obliging the enemy to defend all of them. General William T. Sherman, in the American Civil War, called this placing the enemy "on the horns of a dilemma." If remarkable success is achieved or critical vulnerabilities are revealed or created, the commander can exploit them—by changing intermediate objectives, or by attacking a vulnerability. The commander would thereby proceed toward the ultimate objective by the actual, as opposed to the apparent, line of least resistance. This would be better than making the intermediate objectives obvious—as is likely if forces are concentrated against them—because the enemy can more easily defend them.

Economy of force, then, need not be a passive or defensive concept, with the true "action" happening elsewhere. Operationally it should have more profound dimensions—it is more than the employment of forces for limited attacks, delays, or retrograde operations.

Further, forces that attack at the decisive point need not be larger than those assigned economy-of-force missions. The words "mass" and "concentrate," and the idea that economy of force is the "reciprocal" of mass, may create the incorrect impression that combat power must be distributed in that manner. Instead, combat power concentrated for the decisive action must simply be more powerful than the enemy when and where battle begins, or at least at the crucial place and time. We have already noted that the commander should assign as small a proportion of the force as possible to secondary missions. That said, however, in some situations the larger the force used for secondary missions, the so-called "economy-of-force missions," the more likely is the enemy to compromise his defense against the main attack. Decisions pertaining to the strength of forces are not about frugality; they are about balance, effectiveness, and calculated risk.

Let us more thoroughly consider what is meant by "mass." Mass has traditionally meant the concentration of people, weapons, etc., where and when

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are not about frugality; they are about  
balance, effectiveness, and calculated risk.”*

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it mattered most. US Army doctrine in 1986 defined mass in an aphorism: “Concentrate combat power at the decisive place and time.”<sup>8</sup> This familiar explanation was too limited; newer doctrine issued by the Army corrected that defect.<sup>9</sup> Current definitions refer to massing the *effects* of combat power. The effects massed are primarily those of “fires” (modes of delivering weaponry against an enemy, usually at long range and having an operational-level effect upon the enemy)—lethal and nonlethal, direct or indirect—seeking to disrupt, divert, delay, or destroy enemy forces or information systems. Still, the concept of mass encompasses even more: it embraces any resource that can increase power to influence the enemy—for example, logistics.

The effects are what is important. The goal of war is to achieve political goals by using organized violence to influence the mind and behavior of the enemy leadership. Joint doctrine duly refers to massing effects “to achieve decisive results.” The idea is to achieve such a strong impact as to compel the enemy to accept the political goals of one’s government. To mass effects that do not contribute to this end is to practice poor operational art. For example, the German offensives of March 1918 did not contribute to ultimate ends. The operational commander, General Erich Ludendorff, frittered away his strength against “the line of least resistance,” repeatedly changing both the axis and objective of offensives, with no operational design in view leading to the strategic defeat of the allies.<sup>10</sup> Ludendorff was eventually forced to recommend that Germany seek peace, partly because he had wasted combat power in strategically nonproductive tactical efforts. This illustrates why a good operational practitioner must know not just when and where to attack, but when and where not to.

The massed effects should produce results by attaining objectives that clearly contribute to the enemy’s eventual defeat. For example, it would be proper to mass effects to control decisive points so that subsequent attacks can be made upon enemy centers of gravity. An illustration of this, and of a proper balance between mass and economy of force, is General Douglas MacArthur’s World War II island-leapfrogging campaign in the southwest Pacific.<sup>11</sup> During the campaign, from Australia through the Philippines to Japan, MacArthur’s South West Pacific Command fought on New Guinea and the Admiralty Islands to seize airfields or harbors, but it bypassed and isolated Japanese-held strongholds. By

this formula MacArthur could pick the time and place of battle, using air and naval forces to protect his flanks while concentrating combat power for the next thrust. Confusing the enemy as to where he might strike did not even require tying up Allied forces in diversions. In some ways this island-leapfrogging was much like a naval campaign, with rapid maneuver in very large spaces, surprise, then the massing upon the enemy.

An important reason that mass is now defined in terms of effects is that it has become very dangerous to mass “platforms” and people. This is certainly true when facing weapons of mass destruction; however, some conventional weapons can be nearly as devastating—as was demonstrated in the Gulf War at Khafji and on the “highway of death” from Kuwait City to Basra.<sup>12</sup> New technologies are making it possible to mass even more destructive fires, and ways are being evolved to do so in the framework of an economy of force. What is that evolution likely to produce?

### ***Network-Centric Mass***

US joint vision statements have set forth what American forces are expected to be able eventually to accomplish.<sup>13</sup> One architecture proposed to implement these visions is what some have called “network-centric warfare.” Such investigations as the Navy’s “fleet battle experiments” and the Air Force’s “expeditionary force experiment” suggest how the joint goals may be, or already are being, attained. We can draw from them some preliminary conclusions as to how economy of force may soon be practiced, and how the effects of combat power may be massed.

However, a disclaimer is appropriate: what will be described is a work in progress. Many technological problems have to be overcome before network-centric warfare can exist as an operational capability. Also, doctrine has yet to be developed for it—and this is probably a larger challenge than the technological.<sup>14</sup> Even so, we can expect the future to realize much of this vision.

### ***Three Grids***

The architecture for network-centric warfare will probably comprise three elements: the sensor grid, the information grid, and the transaction (or engagement, or “shooter”) grid.<sup>15</sup> The *sensor grid* could be composed of diverse sensors such as radar of various types, radio-frequency-emission and infrared receivers, low-light-level and other optical devices, acoustic systems, and people. These sensors could be in orbit, in the air, on the ground, or at sea. Some would be permanently in place, others plugged in as and where needed and available.

The *information grid*, much of it permanently in place, would comprise, for example, communications satellites, data-transmission lines, microwave relays, computers, and command centers. The information grid would transmit sensor information, recommendations and orders, intelligence, and real-time information about operations, logistics, and other functions—information needed



by leaders at all levels to plan, monitor, and control operations more effectively, efficiently, and responsively.

The *transaction grid* would draw upon the sensor and information grids to pair weapons incorporated into it with targets and then guide weapons to targets as necessary. Some of the weapons available would require guidance all the way. Others (like sensor-fused weapons, “brilliant” submunitions, and wide-area munitions) are autonomous, needing only to be guided into the general area of action, where they find and identify targets with their own sensors (typically employing infrared for vehicles, acoustic for armor, seismic for personnel) and then attack them on their own “initiative.”

The number of weapons and weapon systems that could be plugged into the transaction grid is large and growing. On land, examples include the Army Tactical Missile System, which can dispense brilliant antitank submunitions; artillery-fired, sense-and-destroy-armor, sensor-fused weapons; and tanks such as the M1A2. Ships would also join the grid, with weapons like the five-inch/62-caliber gun (firing projectiles with Global Positioning System [GPS] or inertial guidance up to 63 miles), the Tomahawk cruise missile (several versions), and land-attack Standard missiles. Fixed-wing aircraft would be able to deliver many types of precision weapons—the Joint Standoff Weapon (dispensing sensor-fused weapons), the Standoff Land-Attack Missile (Expanded Response), and Joint Direct-Attack Munitions. Helicopters would also attach to the grid, shooting Hellfire or other missiles, as would information warfare assets.

The transaction grid should represent an extremely lethal and responsive precision-engagement capability, out to hundreds of miles from a shooter. This should be true for several reasons. One is that weapons will be very accurate, because of the guidance provided by GPS, laser-designation, and inertial systems. Another is that some sensors and many weapon systems will be “retaskable,” able to locate and destroy suddenly appearing or time-sensitive targets.<sup>16</sup> Additionally, many weapon platforms will have the range and versatility to be used against almost any target within the battle space, while autonomous weapons, as noted, can find and attack targets without outside intervention, once in the vicinity. Furthermore, the transaction grid, buttressed by GPS, digital maps, computers, and display systems, should be able accurately to merge data from sensors. All these things, and more, will make it common for ships, aircraft, and other weapon-launching platforms to have engagement-quality information about targets that their own sensors have not detected.

### *Parallel Warfare*

What implications might network-centric warfare have for these two principles of war, mass and economy of force? First, network-centric warfare could permit a geographically dispersed force to operate as a system—in effect, as a “dispersed mass.” That is, such a force, though its elements might be spread over a large area, should be able to concentrate precision weapons rapidly upon

targets hundreds of miles away. Further, its units may be able to mass fires not only with decisive effect but without needing to maneuver—without, that is, having to get closer to targets, avoid geographical constraints, or achieve some positional advantage. Moreover, network-centric warfare offers the flexibility, operational reach, and battlespace awareness needed to operate on the strategic, operational, and tactical levels at once. It will enable disparate and distant forces to attack targets of various kinds—centers of gravity, critical vulnerabilities, operational functions, tactical forces—simultaneously. In short, combat would no longer have to proceed in the traditional step-by-step, or serial, manner; neither would there be any single axis of effort or point of main attack. Combat would instead be multidimensionally and comprehensively joint.

Punishing and threatening the enemy at all three levels of war at once can achieve substantial and beneficial results, particularly, for instance, if one's own ground forces can make the enemy operate where he can be subjected to precision strikes. Such "parallel war" can produce the systematic disruption of the enemy's operational functions.<sup>17</sup> Comprehensive attacks would be, arguably, especially effective if enemy leadership were targeted.<sup>18</sup> Parallel war might be able to "lock out" (preclude) options, create despair, even lead the enemy to give up.<sup>19</sup> The point is that to achieve results of such magnitude, fires must often be distributed, coming from diverse locations, killing the enemy not with one massive blow but by "a thousand vital cuts" that collectively induce a paralyzing hemorrhage of will. This could be a more significant blow to the enemy than would normally be achieved through the traditional massing of fires.

Furthermore, network-centric warfare, by making a force capable of concentrating fires precisely where desired, may be able to influence enemy actions and perceptions of options in ways that once only forces on the spot, and usually on the ground, could achieve. That is, the capabilities offered by a network-centric warfare force should produce operational advantages and second-order consequences that once required the tangible presence, and particular physical dispositions, of combat power—that is, those examined in discussions of economy of force.

However, balance requires us to minimally acknowledge that induced changes in an enemy's behavior—that is, the effects of network-centric operations—may present either new opportunities or new challenges. How enemy behavior might be changed by network-centric warfare in itself is necessarily speculative. Nonetheless, the concept of "effects-based operations" is a fundamental part of the network-centric concept; the following is illustrative of the kinds of behavioral effects envisioned.

Adversaries confronting a network-centric warfare force will probably risk massing power only at the specific time and place of their main attack. They may do so, further, in a tentative and covert manner, rightfully fearful that the open movement of forces will draw massed fires, as at Khafji in 1991. This should make operationally significant surprise difficult for the enemy to achieve, and it

should lessen the effectiveness of any attack delivered. Enemy forces may also feel constrained to intermittent raid-like operations, perhaps down to the terrorist level, though these may be conducted on a broad geographic scale. Tactical actions will probably be sharp and high in tempo; enemy units will be trying to "merge and grapple" as rapidly as possible with US forces in order to escape precision fires. At the same time, a foe's ability to disperse and build up power, so as to create subsequent operational opportunities, will be substantially less than in the past; enemy commanders will probably decide, correctly, they must fight with what they have on hand, knowing that follow-on forces and logistical support likely would be decimated. While the enemy's opportunity to employ the economy-of-force principle may be physically less than in the past, beware his attempts to do so on other levels, such as through operational deception.

An attacking force employing network-centric concepts could expect to see attempts at "mobile defense," such as have been used to defend against the uncertain impact of amphibious assaults.<sup>20</sup> That is, the defenders may have to wait to see what the network-centric warfare force does, where it concentrates its effort, before they can react. The physical disposition of the attacking force need no longer be shaped with respect to the intended objective, and thus perhaps reveal it; the enemy would be confronted by a "shapeless" threat force, possibly hundreds of miles across, that could strike anywhere in a vast area. Of course, reliance on a mobile defense abandons the initiative—another principle of war—and a force waging network-centric warfare is uniquely able to exploit such a situation.

A final significant implication of network-centric warfare is that a force may be able to simultaneously perform missions associated with economy of force and with massing. For instance, an *Arleigh Burke*-class destroyer should be able to help escort a battle group while participating (with its long-range gun and cruise missiles) in a main attack against the shore. The Army Tactical Missile System should have the same versatility. One result would be a substantial reduction in the resources once reserved exclusively for such missions as force protection.<sup>21</sup>

### ***How Much Mass Is Required?***

Does the principle of mass require a commander to try to concentrate "overwhelming combat power"?<sup>22</sup> It can be difficult to determine how much force is necessary to achieve an objective, but somehow the commander must decide how much should be dedicated to the decisive attack. A rule of thumb has evolved for estimating the force ratio an attacker on land needs over a defender—the "three-to-one rule," possibly first written about by President Abraham Lincoln in 1863.<sup>23</sup> This "rule" has become so much a part of military culture in the United States that few question it; many assume it can be applied to other situations, such as war at sea. In fact, however, it is not of much use even on land. At best it is most appropriate for static, attritional warfare situations; it does not attend well to asymmetrical combat, where disparate forces contest. Even if the three-to-one ratio might have validity for infantry opposing infantry, what if infantry

is attacked by tanks? The “rule” is virtually useless in contemporary contexts; it will be even less relevant in the future.

All this may explain in part why Clausewitz was so circumspect about numbers and their implications for combat. To be sure, he felt that numbers were important; if all things between opposing forces except numbers were equal, he held, numbers would determine the result. However, Clausewitz argued that other factors, particularly leadership and maneuver, affected the outcome of battle just as profoundly, citing historical examples in which smaller forces defeated larger.<sup>24</sup> Such inherent complexity is one reason that we speak of operational “art” instead of “science.” In spite of all efforts to reduce such matters to calculation, they come down to the intuition, the *coup d’oeil*, of the commander. Mass can not be understood simplistically—nor can economy of force.

If it is a complicated matter to determine how much force is needed to defeat an enemy, part of the problem is that US doctrine calls for “overwhelming” the enemy. While this is not a bad goal in itself, more is not always better. At some point the law of diminishing returns asserts itself, and the addition of combat power does not contribute at all to the final outcome.<sup>25</sup>

Having too much power does not sound like a problem; but, in fact, adding more force when one already has enough to prevail decisively—and the word “overwhelming” creates a predisposition always to seek greater numerical advantage—can have negative consequences. First of all, it may make execution more difficult: envision all the elements of a very large force trying to do the same thing in the same place at the same time.

Another problem with assembling overwhelming combat power is that it becomes more difficult to surprise the enemy, at least above the tactical level. Even network-centric warfare—which relies upon technology, precision fires, training, doctrine, and maneuver—may also require, or at least benefit from, surprise to defeat an enemy with initial advantages of numbers and position. To be sure, technologies like stealth can increase the chances of tactical surprise, but a large force is still harder to hide than a smaller one. Fortunately, in network-centric operations the initial attack elements need not be near the intended area of operations; even if detected, their operational reach and maneuverability should conceal where their concerted main effort will fall.

There is, then, no simple formula for concentrating combat power, especially (as in traditional warfare concepts) platforms and people. Tomorrow’s commander must have a correct understanding of what economy of force actually entails, especially how it can help create operational opportunities, and what the application of mass does (and does not) require. He will need to think in terms of “decisive” power, and of balance and economy—assembling a force that is large enough to achieve the mission with near certainty, and so disposing it that all of its elements are usefully employed and effectively proportioned. There is an element of “shrewdness” in both massing combat power and in practicing economy of force—as is to be expected, since the two are intimately related.

## NOTES

1. The principles of war are objective, offensive, mass, economy of force, maneuver, unity of command, security, surprise, and simplicity. US Army, *Operations*, Field Manual (FM) 3-0 (Washington: GPO, 14 June 2001), pp. 4-11 to 4-15; US Joint Staff, *Doctrine for Joint Operations*, Joint Pub 3-0, (Washington: GPO, 1 February 1995), app. A., p. A-1.
2. Bernard Brodie, "The Worth of the Principles of War," lecture delivered 7 March 1957 to the US Army Command and General Staff College, Fort Leavenworth, Kans. See also C. R. Brown, "The Principles of War," *US Naval Institute Proceedings*, 75 (June 1949), 621-33.
3. FM 3-0, p. 4-13.
4. Carl von Clausewitz, *On War*, ed. and trans. Michael Howard and Peter Paret (Princeton, N.J.: Princeton Univ. Press, 1989), p. 213.
5. Samuel Eliot Morison, *The Two-Ocean War* (Boston: Little, Brown, 1963), p. 148. On this tendency see David C. Evans and Mark R. Peattie, *Kaigun: Strategy, Tactics, and Technology in the Imperial Japanese Navy, 1887-1941* (Annapolis, Md.: Naval Institute Press, 1997), pp. 447-517.
6. For an excellent new interpretation of that battle, see Dallas Isom, "The Battle of Midway: Why the Japanese Lost," *Naval War College Review*, 53 (Summer 2000), 60-100.
7. B. H. Liddell Hart, *Strategy* (New York: Penguin Books, 1991), pp. 332-37. Hart's ideas about maneuver war and the indirect approach are still valid and exciting. They may be useful for those writing doctrine for network-centric warfare.
8. US Army, *Operations*, FM 100-5 (Washington: GPO, May 1986), p. 174. In this version of the US Army's principles of war there is no reference to the massing of effects: only of concentrating combat power. There is also no mention of "overwhelming" combat power, though the explanation of mass does refer to employing "a predominate of national power" in certain situations.
9. FM 3-0, p. 4-13.
10. John Keegan, *The First World War* (New York: Random House, 1999), p. 404.
11. Morison, p. 282. See "Summary of RENO III, Outline Plan for Operations of the Southwest Pacific Area to Reoccupy the Southern Philippines, Prepared by the GHQ, SWPA, 20 October 1943," as collected in Milan Vego and Robert Strahan, comps., *Operational Art Historical Companion* (Newport, R.I.: US Naval War College, September 1998), pp. 140-45. Nimitz's Central Pacific operations contributed to MacArthur's South West Pacific successes.
12. Richard P. Hallion, *Storm over Iraq* (Washington: Smithsonian Institution, 1992), pp. 220-21, 235-36.
13. US Joint Staff, *Joint Vision 2020* (Washington: GPO, 2000), pp. 3-45.
14. Paul Johnston, "Doctrine Is Not Enough: The Effect of Doctrine on the Behavior of Armies," *Parameters*, 30 (Autumn 2000), 30-39. Doctrine is a serious issue; too many military personnel have a cavalier attitude about it. Incorrect doctrine has killed millions.
15. Arthur Cebrowski and John Garstka, "Network Centric Warfare: Its Origin and Future," *US Naval Institute Proceedings*, 124 (January 1998), 28-35; Office of the Secretary of Defense (Net Assessment), Arlington, Va.; David S. Alberts, John J. Garstka, and Fred Stein, *Network Centric Warfare: Developing and Leveraging Information Superiority*, internet, <http://www.dodccrp.org/NCW/ncw.html>, accessed 15 May 2001; and Frederick Stein, "Observations on the Emergence of Network Centric Warfare," in *1998 Command and Control Research and Technology Symposium Proceedings*, June 1998, internet, <http://www.dodccrp.org/steinncw.htm>, accessed 14 December 2001.
16. For the potential, see Commander Second Fleet and Maritime Battle Center draft paper, "Fires/Precision Engagement Concept of Operations (CONOPS) for Fleet Battle Experiment Hotel," draft, 15 June 2000, internet, <http://www.nwdc.navy.mil/mbchome/hotel/files/HotelFiresPEconopsDraft1.doc>, accessed 15 May 2001.
17. See Antulio J. Echevarria II, "Fusing Airpower and Land Power in the Twenty-first Century," *Airpower Journal*, 13 (Fall 1999), 66-74.
18. John A. Warden, "The Enemy as a System," *Airpower Journal*, 9 (Spring 1995), 40-55.
19. Cebrowski and Garstka, pp. 28-35.
20. Theodore L. Gatchel, *At the Water's Edge* (Annapolis, Md.: Naval Institute Press, 1996), p. 5.
21. Planners, though, must make provision for such requirements. For example, if the commander does not allocate a portion of available combat power exclusively to the mission of force protection, he or she should make it clear to the entire force how force protection is to be accomplished.
22. Actually, recent doctrine refers to massing decisive force to "overwhelm an adversary" or "combat power to overwhelm enemies." See Joint Chiefs of Staff, *1997 National Military Strategy of the United States*, (Washington: GPO, 1997), executive summary; and FM 3-0, p. 4-13.
23. T. N. Dupuy, *Understanding War* (New York: Paragon House, 1987), pp. 31-37.
24. Clausewitz, pp. 194-201.
25. Dupuy, p. 144.

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# Macedonia: End of the Beginning or Beginning of the End?

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"In this part of the world it is difficult to find the true path between reason and emotion, myth and reality. This is the burden of the Balkans, which prevents us from becoming truly European."

— Kiro Gligorov

First President of the Republic of Macedonia

Following the horrific events of 11 September 2001, the security dilemma of the former Yugoslavia virtually vanished before the eyes of many policymakers. Understandably, the United States and Europe felt compelled to divert resources away from the region and into their mutual struggle against global terrorism. Yet for more than a decade, the Balkans presented the West with one of its greatest strategic and policy challenges. The prosecution and aftermath of four violent conflicts there—including the first military intervention by NATO—consumed billions of dollars and involved exhaustive diplomatic and regional initiatives.

The Balkans no longer constitute a primary foreign policy challenge; this does not mean, however, that the international community can afford to look in all directions other than Southeast Europe. The region itself is in a period of difficult, painful transition, and stands the chance of rapidly succumbing to transnational criminal influences and becoming a "black hole" of terrorism such as happened in Afghanistan, which became not a sponsor of terrorism but rather a terrorist-sponsored state. Even as halting progress toward representative government and institution-building takes place in Croatia, Serbia, and Kosovo, internal corruption, black-market activities, and illegal arms shipments threaten the stability of the region. When \$25 can buy anyone a real, not a counterfeit,

passport, the area has increasingly become attractive to those who easily escape the notice of already overstretched internal security forces. Nowhere has this security dilemma entered a more crucial period than in Macedonia.

To be sure, the first year of the 21st century was not kind to Macedonia. Although admitted as an “associate member” of the European Union in April 2001—with the mutually proclaimed expectation of eventual EU membership—and a member of the so-called “Vilnius Nine” seeking membership in the next enlargement round of the North Atlantic Treaty Organization, Macedonia (as well as Albania) was widely regarded as having little to absolutely no chance of securing NATO membership during the Prague summit of 2002.<sup>1</sup> Yet among this group of nine ex-communist states seeking NATO membership (widely seen as less restrictive than EU criteria for membership), such alliance and institutional membership was believed to be absolutely critical for both long-term security and to attract direct foreign investment in struggling economies.

Within Macedonia itself, an ethnic Albanian insurgency under the rubric of the National Liberation Army (NLA) came perilously close to paralyzing the nation in a state of political and civil gridlock; equally, the leaders of NATO, the European Union, and the United States seemed unclear about what—if any—course of action was best to take regarding the fate of this tiny ex-republic of the former Yugoslavia.<sup>2</sup> Ultimately, even the ethnic governing coalition within Macedonia, formed in May 2001 and proclaimed a “national unity government,” appeared incapable of agreement on central, critical issues. One informed observer caustically remarked, only days after the unity government’s formation, that “this government has nothing to do with genuine democracy . . . [and] is too weak and fragile to undertake any serious reform in the country.”<sup>3</sup> By the end of 2001, the coalition government had disintegrated and the nation drifted, once again, toward dissolution.

In this article, we argue that Macedonia’s future is essential to the European security architecture. Whether or not Macedonia survives will largely be dependent on “external” forces and actors. Clearly, the root solutions for all Southeast Europe will prove problematic, and at times seem overwhelming, but should not prove ultimately impossible. Macedonia may represent the greatest challenge as well as the last best hope for the Balkans.

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The answer to whether the future Europe will be characterized as one of constant security dilemmas or a place of integrating security identities may well lie with the fate of Macedonia. This article highlights significant historical markers that have defined the region, outlines some of the differences and grievances that have plagued Macedonia throughout its tenuous post-1991 existence, and offers pathways that might prove useful in outlining possible solutions to the political and civil nightmare that took hold of Macedonia in 2001.

### *The Weight of Too Much History*

In the Balkans, a common aphorism suggests that the region “has so much history, it doesn’t need a future.”<sup>4</sup> Nowhere in this region is the weight of history more profound than in Macedonia, where the load of the past leans into every human effort made toward building the present. Indeed, Macedonia and its surrounding area are so rich in history that it seems criminal to summarize in a few pages. And, despite the claim by some that Macedonia is simply a “Tito-ist creation” of post-1944 Yugoslavia, the nation itself has a long, illustrious—and weighted—history.

#### *Time of the Ottomans*

After the fall of Byzantium (in 1453), the next great—and most enduring—regional influence was that of the Ottoman Empire.<sup>5</sup> The empire itself reached its peak during the middle of the 16th century, and covered the Balkan peninsula, Romania, a significant part of Hungary, all of the Aegean Islands, Cyprus, Algeria, Tunisia, Libya, Egypt, Syria, Arabia, Mesopotamia, Asia Minor, Georgia, and Crimea.<sup>6</sup> The Slavs in Macedonia were ruled by their fellow Slavs, who in turn were subject to Turkish governors. Political rights were reserved for the Turks, but, ironically, “religious toleration made possible the self perpetuation of national consciousness.”<sup>7</sup> Alice Ackerman describes Ottoman rule similarly: “However repressive and exploitive, Turkish rule was also a time of peaceful coexistence. Turks, Slavs, Albanians, Greeks, Vlachs, Jews, and Roma often lived together in multiethnic communities.”<sup>8</sup>

As the Ottoman Empire declined during the late 19th century, Macedonia became an inevitable pawn in European balance-of-power politics. After the Russo-Turkish War of 1878, Macedonia became part of Bulgaria as a means to counter Austria-Hungary. Four months later at the Congress of Berlin, Macedonia was ceded back to the Ottomans. To counter Turkish rule, the Internal Macedonian Revolutionary Organization—known most commonly as IMRO, or VMRO—emerged in 1893.<sup>9</sup>

#### *The Kruševo Republic*

In August 1903, a Macedonian uprising resulted in the attempted establishment of the fabled Kruševo Republic. Although the “republic” lasted only two months and ended in defeat, its significance is recounted in Macedonia’s present constitution. That 30,000 rebels held off a formidable Turkish force of



300,000 and established a democratic commune of the Kruševo Republic was in itself an ultimate act of defiance against the Ottoman Empire.<sup>10</sup>

Although this republic survived only a short while, its government notably expressed tolerance for its Vlach, Bulgarian, Macedonian, and Albanian population. Its manifesto is unwritten and therefore not widely known.<sup>11</sup>

*Two World Wars, Two Balkan Wars,  
a Great Disaster, and a Civil War*

The First Balkan War (1912-1913) resulted in Macedonia's and Albania's "liberation." The Second Balkan War in 1913, however, ended in Macedonia's division: one-tenth to Bulgaria (Pirin Macedonia), one-half to Greece (Aegean Macedonia), and two-fifths to Serbia (Vardar Macedonia).<sup>12</sup> World War I resulted in another Macedonian division, but by the end of World War II—and with Josip Broz Tito's direct action—Macedonia became a recognized republic, with a distinct ethnic identity and recognized Slavic language, within the Yugoslav federation.<sup>13</sup>

After World War I, Vardar Macedonia and Kosovo became part of the Kingdom of the Serbs, Croats, and Slovenes, but the Albanians were not recognized as a separate nation. Macedonia was known as South Serbia and Kosovo as Old Serbia. The Serbs suppressed the Albanians, which in turn fostered Albanian armed resistance in the 1920s and raised national awareness among Albanians.<sup>14</sup>

In contrast to the emerging Macedonian nation, a "greater" Albanian nationalism was among the last to develop among the Balkan peoples. In 1878, the Prizin League was established to protect Albanian lands, and it would later challenge Ottoman rule. Albanian guerrilla units emerged in 1906, and in 1908 Albanian leaders adopted the Latin alphabet for the Albanian language. In 1910 the Albanians revolted against the Ottomans in Priština, and the revolt spread to Kosovo; in 1912 Albanians took over Skopje. The Treaty of Bucharest in 1913 established the Albanian state; however, almost half the Albanian population lived outside its borders.<sup>15</sup>

After Tito's break from the Cominform and Stalin in 1948, relations between the Albanian state and Yugoslavia rapidly worsened, making life for Yugoslav Albanians often unbearable. Yugoslavia closed down Albanian schools and discriminated against ethnic Albanians politically, economically, and socially. Albanians began identifying themselves as Turks simply to escape this discrimination.<sup>16</sup> As a counterbalance to this growing unrest, Marshal Tito emphasized a strong "Macedonian" identity in the Macedonian republic as a way to contain Albanians within Serbia and Macedonia.<sup>17</sup>

*The National Liberation Army*

The National Liberation Army (NLA), which came to prominence in March 2001, claimed itself a self-appointed protector of Macedonia's ethnic Albanians. Many of its commanders were veterans of the Ushtria Çlirimtare e

Kosovës—more commonly known as the UÇK or the Kosovo Liberation Army. Most prominent among these was Ali Ahmeti, the current leader of the NLA. In 1993, Ahmeti and Emrush Xhemajli gained the approval of the Nationalist Movement of Kosova to create the KLA.<sup>18</sup> By 1997, Ahmeti was living in Tirana, and actively organized groups to infiltrate and attack police in Kosovo.<sup>19</sup>

Some observers believe that the NLA actions grew out of ethnic Albanian extremists who were frustrated when elections in Kosovo produced a moderate local government under the leadership of Ibrahim Rugova. Until the spring of 2001, the confrontations between Macedonian government forces and the NLA took place only in Tetovo (with a 90-percent ethnic Albanian population) and other border towns in the northwest that were largely ethnic Albanian. By April 2001, however, with the active control of Kumanovo, in the northeast, the tide of events clearly had taken a turn for the worse. By June 2001, rebel forces had seized Aracinovo, six miles from the capital of Skopje and within rocket-firing range. The precarious “national unity government”—a coalition of four political parties that included two ethnic Albanian identities—weakens considerably in credibility when the leaders of the two Albanian parties, Arben Xhaferi and Imer Imeri, signed a joint declaration of support with NLA leader Ahmeti in Priština on 22 May.<sup>20</sup> At the time the declaration was signed, Boris Trajkovski, president of the Macedonian republic, and NATO Secretary-General Robertson openly referred to the NLA as “criminal,” “thugs,” and “terrorists” in various public statements.

The need for external, active EU and NATO intervention within Macedonia became obvious. Admittedly, as events worsened by the summer of 2001, both the EU and NATO attempted more proactive approaches. On 5 July 2001, NATO mediated a cease-fire between Albanian insurgents and Macedonian government forces; whether such mediation would lead to permanent resolution or prolong ambiguous outcomes, however, remained uncertain. By September 2001, the NATO-led small arms collection program named Operation Essential Harvest was begun as a four-week-long follow-on confidence building measure to a general framework agreement signed by rival factions at Lake Ohrid on 13 August. (Frequent Slav media reports in Macedonia asserted that the 3,300 weapons “harvested” in the NATO operation amounted to less than three percent of suspected ethnic Albanian weapons—estimated between 110,000 and 700,000.) After the completion of Essential Harvest, a German observer force was stationed in the region. All was clearly not well in Macedonia.

### ***Birth of a Nation***

Strained relations between ethnic Macedonians and ethnic Albanians have existed since the birth of the Macedonian state.<sup>21</sup> Albanians boycotted the referendum on Macedonia’s independence and the 1991 census, claiming the latest census would not portray their true percentage of the population. By 1993, however, the ethnic Albanian Party for Democratic Prosperity (PDP) declared

that Albanian autonomy was not on its agenda. Instead, the PDP wanted state and constitutional recognition of the Albanian nation.<sup>22</sup>

Unfortunately, the criteria for Macedonian citizenship was ambiguous from the start, and the original constitution only reinforced this ambiguity. It referred to constitutional nationalism, which confers a special status for the dominant nation within the state versus the democratic principle that confers sovereignty on all citizens of the state.<sup>23</sup> The constitution stated as a premise:

Taking as starting points the historical, cultural, spiritual, and statehood heritage of the Macedonian people and their struggle over centuries for national and social freedom . . . and particularly the traditions of statehood and legality of the Kruševo Republic . . . as well as the historical fact that Macedonia is established as a national state of the Macedonian people, in which full equality as citizens and permanent co-existence with the Macedonian people is provided for Albanians, Turks, Vlachs, Romanics, and other nationalities living in the Republic of Macedonia, and intent on the establishment of the Republic of Macedonia as a sovereign and independent state, as well as a civil and democratic one . . .<sup>24</sup>

Given the historical context of ethnic relations in Macedonia, one must differentiate between Kosovar Albanians and Macedonian Albanians. From its start, Macedonia, unlike Serbia under the reign of Milošević, had always intended an inclusive regime. In Macedonia, Albanians were included in state politics; in Kosovo, Albanians in the 1990s set up parallel—and illegal in the eyes of the Yugoslav government—“shadow” institutions.<sup>25</sup> Albanian political parties in Macedonia have been instrumental government coalition partners.

#### *Creating Community*

Macedonia's political leadership had been a significant factor for Macedonia's relative ethnic harmony. In 1995, President Kiro Gligorov talked about the citizens of his nation in this manner: “We are all Macedonians. We are all citizens of this country, and Albanians have a long-term interest to integrate themselves in this country. This does not mean that they should lose their national, cultural, and linguistic characteristics.” Furthermore, he stated:

In the ethnically-mixed Balkans, it is impossible to create compact national states in which only members of one nation can live. This is an absurdity which can hardly be realized in Europe. . . . Perhaps one nation can win a victory here and there, but then this would only lead to revanchism on the part of the others, and thus, there would never be an end [to warfare].<sup>26</sup>

One way to defuse the problem of conflicting nationalities is to create a new nationality or identity. Indeed, the idea of creating a European identity in Macedonia has influenced Macedonia's desire for membership in European institutions.<sup>27</sup> The idea of a federalized Europe resonates with citizens of Macedonia; citizens were accustomed to a federalized system under the former Yugoslavia, and they might view their inclusion in the European family as a way

to bolster their status and way of life.<sup>28</sup> In truth, some ethnic Albanians do feel Macedonian. Nusret Jakupi, a military officer in the Macedonian army said: “I, as an Albanian, feel I am in my country. I haven’t come from another country. I am living in the same place where my grandfather, my great grandfather, and generations before have lived.”<sup>29</sup> According to Sami Ibrahimi, an ethnic Albanian leader:

I think we have been lucky to establish this country without any conflict at all. And the contributions of [the ethnic] Albanians were a huge part because we know that we can talk to each other. The dialogue is going on in Macedonia. That is our priority. We respect each other, but the promises that are given are not realized. It was always said that things would be realized step by step, but unfortunately there’s still not a real democracy here. But we have continued to preserve the peace. If we have not learned the lessons from Bosnia-Herzegovina, then we are illiterate.<sup>30</sup>

To be blunt, most ethnic Albanians in Macedonia simply want stability and opportunity, and they have no desire for a Greater Albania. In effect, the sense of an Albanian “nation” which crosses over territorial borders does not necessarily demand the creation of a separate Albanian “state.” Generally, ethnic Albanians want their language officially sanctioned, more decentralization, constitutional amendments guaranteeing equality, a change in the preamble of the constitution, an internationally monitored census, and an Albanian-language university.

### ***The Economic Geography of Macedonia***

Because this case focuses on the central identity and legitimacy of the Macedonian state, it seems crucial to recognize that neither language and religious differences nor the resolution of ethnic Albanian vs. ethnic Macedonian relations will prove sufficient to understanding the insecurity of the region. Far more significant tensions exist. Specifically, it is the success or failure of Macedonia’s “economic geography” that will ultimately determine the fate of its physical geography. It thus adds to the tragedy of Macedonia to emphasize that although the methods are clearly abhorrent, the central criticisms of the NLA—as well as the claims of the ethnic Albanian political leadership—are essentially correct.

With some justification, Albanians regularly complain that they are the victims of systematic discrimination in Macedonia, receiving the worst health-care and education and having the least chance for employment in the public sector. Yet as Albanian leader Arben Xhaferi would have it, any potential future success will be compelled by the inevitable allure of the West. “Spiritually,” he claims, ethnic Albanians “are with the East, but their self-interest lies in the West.”<sup>31</sup> But inequality between ethnic identities describes only part of the problem. Macedonia suffers from—and has always suffered from—severe economic inequities in the Balkans. The poorest of the former Yugoslav republics, Macedonia was born “economically challenged.”



Macedonia and the Surrounding Region

Macedonia's precarious existence ever since its declaration of independence in 1991 has largely been based on conditions—political, ethnic, social, economic—that extend from outside its borders as much as internal dynamics within the nation. And, while Macedonia is seemingly well understood as a precarious example of potential Balkan instability, the tiniest nation in Southeast Europe is also a poorly understood success. Opposing political identities, economic inequities, and regional conflict would seem to have preordained doom long ago for the tiny nation-state. Yet, remarkably, Macedonia has been able to balance extraordinary contradictions.<sup>32</sup>

Further compounding such pressures, the regional demographic shifts that occurred during 1999 must also be considered as part of the economic geography of the region. Macedonia allowed 12,000 NATO troops to deploy along the Kosovo border without, initially, having any guarantees of Macedonia's internal security had the nation been brought into a wider conflict. Although Macedonia was widely criticized in the international community for not providing more support to the hundreds of thousands of Kosovar Albanians that fled across the border from Yugoslavia, few recognized that Macedonia was simply incapable of handling such a flow of human traffic.<sup>33</sup>

The 1990s radically altered the economic geography of the Balkans, shifting economic processes to focus on new markets and new partnerships. The region's legacy of a turbulent past, its marginal position at the "periphery" of Europe, and the lack of any economically dominant country willing to act as a driving force for the region simply assured continued underdevelopment.<sup>34</sup> Unlike Slovenia or Croatia (former Yugoslav republics that had some forms of economic

infrastructure and liberalization tendencies in place at the time of their respective beginnings as independent states), Macedonia possessed geographically-driven economic challenges from the beginning. A nation whose largest export traditionally was fermented tobacco, Macedonia will continue to face daunting internal and external challenges. In retrospect, it ought to seem miraculous that the tragedy of 2001 did not arrive sooner.

### ***Democracy, Legitimacy, and Stability***

While many within the diaspora Albanian community in particular would object to our assertion, we consider the NLA (and its follow-on, the ONA) to be a transnational, terrorist organization born from the grievances of the Albanian community within Macedonia and from the “successful” Albanian experience in Kosovo that led to the liberation of the province from the control of Yugoslav president Slobodan Milošević. The uncomfortable “lesson” of the Kosovo experience led the NLA and its supporters to believe that abuse of human rights in the Balkans would eventually cause the West to intervene. One of the obvious falsehoods of the NLA experience in Macedonia, nonetheless, is that it remains impossible to establish a lasting civil society at the point of a gun. At best, the legitimate Albanian grievances within Macedonia would be offset by the use of NLA violence to secure its political and civil agenda.

Unlike the 1995 post-Dayton Bosnia-Herzegovina and Croatia, and unlike Kosovo after the 1999 intervention, Macedonia, despite all its challenges and contradictions, has not yet divided its population. Macedonia is the last genuinely multi-ethnic state in the Balkans; it is unique in Southeast Europe in that it still comprises an ethnically heterogeneous society of Slavs and Albanians. For some, this suggests the impossibility of its continued existence. Cynics, often with no Balkan experience or knowledge, can be quite brutal in their ideas and so-called resolutions. John Mearsheimer and Stephen Van Evera, for example, have suggested:

If the Slavs refuse to share more equally with the Albanians, violence is inevitable. To forestall this, NATO should consider calling for a plebiscite to determine whether the Albanians want to remain in Macedonia. If not, Macedonia should also be partitioned. This is feasible because the Albanians of Macedonia are concentrated in western Macedonia, next to Kosovo and Albania.<sup>35</sup>

Such a “solution” is flawed by internal contradictions. Why NATO should violate its own standard of avowed post-conflict neutrality and take on the role of mandating plebiscites, normally the role of institutions such as the Organization for Security and Cooperation in Europe (OSCE), is unclear. Why Albanians of western Macedonia, Kosovo, and Albania itself should be aligned with (read, “partitioned”) into a community that would represent the poorest ethnic community in Europe, and yet be separated—physically, psychologically, economically—from the very ethnic communities and trading blocs they would

depend on (such as the "Slavs" of Macedonia) and still be somehow expected to remain viable is doubtful. Why Mearsheimer and Van Evera cannot recognize that the partition they advocate is yet another barbaric form of ethnic cleansing, and more than just an "ugly formula for ending wars," truly seems astounding.

Macedonia is the last ethnically heterogeneous society that remains from the former Yugoslavia. While some seasoned Balkan observers, notably Timothy Garton Ash, have argued that the true lesson of post-Yugoslavia is that ethnically homogeneous societies—such as Slovenia—tend toward stability rather than disintegration, any number of philosophers and social scientists have argued the exact opposite. A nation, as Thomas Franck has noted, largely comprises a people, while a state consists of its citizenry and bounded territory.<sup>36</sup> Only rarely does a nation of one people find itself within the exclusive territory of a defined boundary in a "pure" nation-state.

### ***Cooperation or Conflict: The End Is in Sight***

Macedonia, since its independence, has come perilously close to internal collapse on more than one occasion. Geographical isolation, obvious lack of technological sophistication as well as lack of access to technology, and evident and continuing political instability—severely aggravated by the Kosovo crisis of 1999—have failed to encourage foreign investment over the long run. That said, such investment and the successful implementation of economic reforms are the only means to secure stability or insure Macedonia's long-term success.

Yet if one were to take a retrospective look at the Balkans in general over the last decade of the 20th century, it might indeed seem miraculous that Macedonia had not suffered a fate similar to that of its neighbors. The future for Macedonia seems laced with promise as much as peril.

Predictions in the Balkans, even more so than elsewhere, are a foolish enterprise. But given the argument presented here, we offer the following observations as plausible future directions:

- *Macedonia will always be defined by "the other."* Distasteful as it seems, Macedonia owes perhaps a debt of gratitude to Slobodan Milošević. If not for his ruthless machinations and maneuverings, Macedonia might not have had the impetus and the compassion to seek independence in 1991. If not for the clumsy maneuverings and often unprincipled actions of the former Serbian leader, the amount of international support for Macedonia's independence and continued success would have been even less than it was. Macedonia will likely continue to be defined by its relations with the other states that surround it. Whether we speak of Kosovo or Serbia at large, Greece, Bulgaria, or Albania, it remains that Macedonia, a land-locked country, must gracefully maneuver a path through difficult waters.

- *Macedonia's dependence on "the kindness of strangers."* According to Bodo Hambach, coordinator of the Stability Pact for Southeastern Europe, regional support for Macedonia will override the conflict of 2001. His view is that

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***“Macedonia is the last ethnically heterogeneous society that remains from the former Yugoslavia.”***

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the NLA “terrorists” are politically isolated “as never before, from the government of Albania, from the official Kosovo Albanians, and from the political parties of the Albanians in Macedonia.” When asked in an interview, “Who is supposed to keep in check these UÇK [NLA] fighters from Kosovo?” Hambach replied:

Whoever holds power in Kosovo. And that is KFOR [NATO’s peace-enforcement force in Kosovo]. It has the obligation under international law to ensure that no threat to a neighboring country comes from this territory. KFOR has to draw a line in the sand. . . . Not all violence shown on TV means war. We are dealing with armed confrontations, but these are not crossing the threshold of war. I consider it a controllable conflict. This includes clear opposition terrorism. . . . These terrorists now notice how isolated they are. They now want to present themselves as freedom fighters and portray the terrorist actions as a popular uprising in Macedonia. . . . Since Milošević’s departure, there has been no head of state in the region who considers military aggression to be a means of policy.<sup>37</sup>

Interstate cooperation has also occurred between Serbia and Macedonia. Both countries have agreed that the best way to manage the ethnic Albanian extremists is with restraint. Macedonian President Boris Trajkovski and Yugoslav President Vojislav Koštunica signed treaties that delineate the border between their countries. Furthermore, Koštunica rejected the idea of a “Greater Serbia” and declared that political accommodation would produce a future stable and decentralized Yugoslav state.<sup>38</sup>

● *The need to establish milestones for determining economic progress and promoting achievements.* The sad truth, of course, is that it took war in Kosovo before renewed assistance would be offered in any significant amount to Macedonia. As with Bosnia, the tragedy of a neighbor’s agony provided another form of salvation both for the Macedonian people and for its continued existence as a state. Until 1999, again unlike Bosnia, the presence of UN forces in the area paled in comparison to the wide latitude of authority and responsiveness that NATO and SFOR (NATO’s Stabilization Force) exercised in post-Dayton Bosnia. The Balkan Stability Pact—known more formally as the Stability Pact for Southeast Europe—signed by Macedonia in June 1999, provided the opportunity for both economic and significant material assistance to this struggling nation. The pact thus offers a measure of hope, however small, for the future republic of Macedonia.



A separate and serious issue concerns the smuggling between the Macedonian and Kosovo border. Unemployment is at 32 percent, and many unemployed Slavic Macedonians are not enamored with ethnic Albanians (including the NLA) who attain wealth through illegal activities, largely smuggling. The good news is that Macedonia has been able to curb inflation, obtain \$250 million in Greek investment, attain a budget surplus, and foster job-creating investments. The continued path toward economic prosperity may help defuse potential ethnic tensions.<sup>39</sup>

- *The necessity to create an effective public relations program, a long-term vision, and a definitive strategy.* Macedonia continues to be “defined by the other” player in the political dynamic. Perhaps just as crucial as working to improve ethnic Slavic and Albanian relations and opportunities and for establishing a sound economic base, Macedonia must portray a sustainable political identity to the expanding and transforming Europe. If Macedonia has a serious intention to eventually become part of the European Union—and it should be clear that this is a long-term goal—then an effective and clear communication of the nation’s intent to be included, rather than continually excluded, must be part of the long-term vision. The signing of the Stabilization and Association Agreement and an Interim Agreement between Macedonia and the European Union on 9 April 2001—in the midst of NLA attacks in western and northeastern Macedonia—is a promising first step.<sup>40</sup> The economic benefits of increased EU integration may best improve the collective lot for the Macedonian population, which, according to polls, worries most about its economic plight.<sup>41</sup> If the nation makes real economic progress, then future coalition governments may regain support.

- *Resist accommodation based on ethnic differences.* While partition seems the easiest solution, it would prove to not be a solution at all. Macedonian President Trajkovski is sincere in declaring, “We cannot redraw borders and boundaries, making smaller units of even purer ethnic states. We cannot survive as a region if ethnicity becomes the sole defining justification of statehood.”<sup>42</sup> Division would only forestall deeper root causes that would surface once again in the future. This is perhaps the lesson we have yet to learn from the effective partitioning of Bosnia-Herzegovina into arguably three entities (Bošniak, Croat, and Serb) and in creating the protectorate status of Kosovo within Yugoslavia.

- *Promote Europeanization.* If Europe has learned anything in the post-Cold War environment, surely one lesson is that European economic integration actually fueled disintegration in Southeast Europe:

Outsiders push Balkan integration . . . but such efforts are doomed to fail in the face of local insecurity and political resistance. The Balkans need the leverage that can be achieved only by satisfying the region’s single common aspiration: “Europeanization.” . . . In practice, Europeanization means extending the cross-border monetary, trade, and investment arrangements that already operate within the EU across

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Europe's southeastern periphery. . . . What the region is not achieving politically on an intraregional basis can therefore be achieved within a few years under the aegis of Europeanization. This "New Deal" should apply to all states in the region—Albania, Bosnia, Bulgaria, Croatia, Greece, Hungary, Macedonia, Romania, Slovenia, Turkey, and Yugoslavia—with no state's existing EU affiliations jeopardized or set back through participation. . . . Early staged entry into liberal European economic regimes will encourage private-sector development, reduce the state's economic role, underpin the rule of law, and increase the benefits of forswearing violent conflict over resources and national boundaries.<sup>43</sup>

The desire to join Europe can be a regional unifying factor. One need only look at how the attraction of EU membership has furthered compliance with expected standards of civil society, including the rights of ethnic minorities, in the Baltics and in Central and Southeast Europe. And one need not look much beyond how the incentive for nearer-term NATO and EU membership for Bulgaria and Romania, and even far-distant-future possibilities for Macedonia and Albania, provided cohesion and unity in the extraordinary intervention against Yugoslavia in 1999, even at great economic, social, and civil distress and expense within these nations.

### *The End of the Beginning?*

Macedonia's situation mirrors Great Britain's uncertain destiny when Winston Churchill declared in his nation's darkest hour, "We are not at the end, or the beginning of the end, but perhaps at the end of the beginning." Macedonia's fate, at this moment, hangs in the balance.

What are the strategic implications for American and European policies? First, policymakers must realize that the ambiguity of professed neutrality between contending parties cannot be maintained indefinitely. Second, there is a pressing need to link Macedonian identity with other European identities and organizations. Membership in NATO, for example, now appears to be a cultural marker of inclusion and economic attractiveness as much as a security guarantee. Since EU membership criteria are so difficult to fulfill, NATO membership is the next best thing—a "Good Housekeeping seal of approval" that assures security guarantees and makes a region more attractive for outside investment. Finally, policymakers should acknowledge openly, while a window of opportunity still exists, the necessary commitment it will take to assist in Southeast Europe. Civil societies—both creating them and sustaining them—require difficult choices and focused effort.

There is a pressing need to be specific and blunt about the fate of Macedonia. If the international community (admitting that the term itself is worthy of lengthy separate debate) supports the legitimacy of Macedonia as a state, then there is a direct responsibility to more firmly anchor that state's future. Whether one subscribes to a pragmatic Realpolitik or supports a more optimistic agenda of increasingly linked European security and integration, one stubborn

truth remains: Macedonia cannot achieve success on its own. If the major players who will most affect the outcomes in the Balkan region (Russia, the EU, NATO, and the United States) cannot find some means of mutual accommodation and agreed-to strategy, then the entire future Europe security architecture will be in peril. This accommodation must rest on valid and enduring principles as well as on the willingness of sustained commitment. This commitment must extend far beyond the low-scale intervention of Operation Essential Harvest that took place in September 2001.

While pessimistic assessments suggest that in 2001 we witnessed the end of the first decade of a new Thirty Years War, the true choice—for those who honestly believe in the notions of democracy, civil society, economic integration, and common security—is clear. Out of the immense complexities and new realities that “Western” intervention has engendered by direct intervention in the Balkans, we can be sure of only one thing: The fate of Macedonia is up in the air. Institutions, alliances, and other actors can help to effect a positive outcome. Whether Macedonians will eventually enter the fold of Europe, or simply continue to be viewed as though some irredeemable mutant, cannot be answered by the Macedonians themselves.

#### NOTES

1. The seven other Vilnius Nine members include Bulgaria, Romania, Slovenia, Slovakia, Estonia, Latvia, and Lithuania.

2. For simplicity, the acronym “NLA” or the term “National Liberation Army” is used consistently in this work to represent rebel Albanian forces inside Macedonia. The NLA adapted the “UÇK” designation from the Kosovo Liberation Army (Ushtria Çlirimtare e Kosovës) and retitled its organization Ushtria Çlirimtare Kombëtare. Thus, “UÇK” and “NLA” are synonymous. Following the Ohrid Framework Agreement of 13 August 2001 and the subsequent NATO-led arms-collection program in September called Operation Essential Harvest, a new organization proclaiming itself the “ANA” (Albanian National Army) continued aggressive insurgent/terrorist activities.

3. Interview with Dr. Biljana Vankovska by Helen Tseresole, in the daily *Avghi* (Dawn), Athens, Greece, 9 May 2001. A copy of the interview was sent to the authors via e-mail from Dr. Vankovska in May 2001.

4. It seems worth noting, nonetheless, that in terms of historical geography, even the term “Balkans” is itself an imaginary destination. German geographer August Zeune mistakenly named the Balkan peninsula (*Balkan Halbinsel*) at the beginning of the 19th century to avoid the culturally sensitive euphemisms of “the European part of Turkey” or “Turkey in Europe.” Zeune mistakenly suggested that the northern borders of the region were the Balkan mountains in Bulgaria, and although Zeune’s geographical boundaries were drawn too narrowly, it remains true that for much of its history since the time of Roman frontier (*limes*) the Balkans was the fault-line of empires, religions, and civilizations where people clashed in their various roles as guardians of the “imaginary” border. “Balkans,” from the Turkish, literally means “mountains.” According to Zeune, “In the north this Balkan Peninsula is divided from the rest of Europe by the long mountain chain of the Balkans, or the former Albanus, Scardus, Hæmus, which, to the northwest joins the Alps in the small Istrian peninsula, and to the east fades away into the Black Sea in two branches.” *Goea: Versuch einer Wissenschaftlichen Erdbeschreibung* (Berlin: 1811), p. 11, quoted in Predrag Simic, “Do the Balkans Exist?” *The Southern Balkans: Perspectives from the Region*, ed. Dimitris Triantaphyllou, *Chaillot Papers*, 46 (Paris: European Institute for Security Studies, 2001), 20.

5. Even before the Ottoman Empire, Macedonia has historical roots. On the shores of Lake Ohrid, for example, where today Albanians and Slavs are at odds, stand the ruins of a Bulgarian/Macedonian medieval fortress which fell in 1014 A.D. After a series of successes against the Byzantine empire, Macedonian czar Samuil’s forces met defeat in on the slopes of the Belasica mountains at Vodca: “the place where the eyes were taken out.” According to legend, Byzantine emperor Basil II, known more commonly as “Basil, the Bulgar Slayer,” blinded all but every tenth man of Samuil’s 14,000 soldiers. The sighted foot soldiers thus led their

defeated comrades back to Samuil's palace in Ohrid. According to legend, Czar Samuil, horrified by what he saw, fell dead immediately upon witnessing the return of his defeated army.

6. Stoyan Pribichevich, *Macedonia: Its People and History* (University Park: Pennsylvania State Univ. Press, 1982), p. 95.

7. *Ibid.*, pp. 99-100.

8. Alice Ackerman, *Making Peace Prevail: Preventing Violent Conflict in Macedonia* (Syracuse, N.Y.: Syracuse Univ. Press, 1999), p. 54.

9. Goce Delchev, one of the 1893 founders of the Internal Macedonian Revolutionary Organization (Vatreshna Makedonska Revolutsionna Organizatsiya) is a symbol of liberation from Ottoman Turks for both Bulgaria and Macedonia. Dimitrija Cupovski, in a 1913 article, described the 35 years between the Congress of Berlin and the Balkan Wars as "one bloody page of continuous struggle of the Macedonian people for their liberation." Between 1898 and 1903 there were 400 Macedonian-Turkish confrontations. Multiple European press reports confirmed the terror and violence conducted by the Turks on Macedonians during the 19th century. Rebecca West in *Black Lamb and Grey Falcon* declared that the subsequent reprisal activities of IMRO in the region were the most effective "terrorism" in Europe.

10. John Shea, *Macedonia and Greece: The Struggle to Define a New Balkan Nation* (Jefferson, N.C.: McFarland, 1997), pp. 169, 171.

11. Keith Brown, interview at the Watson Institute for International Studies, Brown University, 4 April 2001.

12. This geographic division is, admittedly, a contentious claim. In the interest of space and time, the above divisions reflect only the facts of physical geography of the region known throughout history as "Macedonia." The authors allow that the present Republic of Macedonia comprises only a portion of what the Macedonian kingdom of Philip and Alexander represents. Further, the northwest and sections of the western region of the Republic of Macedonia, an area that is predominantly ethnic Albanian, themselves lie outside what is commonly considered the boundaries of ancient Macedonia. Further, as an example of how boundaries in Southeast Europe have become a geographical palimpsest, the villages of Debar, Kicevo, and Tetovo in Macedonia were part of the Kosovo "frontier" from 1913 to 1944 yet today comprise the western boundaries of Macedonia. A number of Albanian insurgents thus view the region as irredenta that does not belong to Macedonia, even as some of the most important cultural sites (such as the monastery of Sveti Jovan Bigorski) are situated here.

13. Ackerman, p. 55.

14. Further complicating the blurred distinctions of cultural, historic, and ethnic geographies, the "Great Disaster" of 1922 in Asia Minor—in which Mustafa Kemal's forces permanently pushed the Greek population out of Anatolia and burned Smyrna to the ground—led to the exchange of populations between Greece, Bulgaria, and Turkey in 1923. Thus, most of the Greek refugees from Asia Minor replaced the Slavic and Turkish elements in Greek Macedonia (an area that Slavic Macedonians commonly refer to as "Aegean Macedonia"). Much of the once predominant—and Slavic—population of Greek Macedonia moved north to present-day Macedonia and Bulgaria. Kemal (who in 1934 assumed the name of "Atatürk") laid the foundation for the modern Turkish state with his brilliant campaign of 1921-1922; his actions affected the dynamics of Macedonia as well. For a description of post-World War I Macedonia as Old and South Serbia and the raising of Albanian national awareness, see Aydin Babuna, "The Albanians of Kosovo and Macedonia: Ethnic Identity Superseding Religion," *Nationalities Papers*, 28 (March 2000), 68-69.

15. *Ibid.*, p. 68.

16. *Ibid.*, p. 69.

17. Erich Frankland, "Struggling With Collective Security and Recognition in Europe: The Case of Macedonia," *European Security*, 4 (Summer 1995), 366.

18. "Kosova" (pronounced "ko-SO-va") is the Albanian pronunciation of the area Serbs refer to as Kosovo-Metohija. "Kosovo" itself derives from the genitive form of the Serbian word for "crow"—referring to the defeat of Serbian medieval knights by Ottoman forces at "Kosovo Polje" (the "Field of the Black Birds") in 1389.

19. Jeffrey Smith, "Birth of New Rebel Army: Macedonian Guerilla Group Forming in Kosovo Poses Threat of Expanded Conflict in Balkans," *The Washington Post*, 30 March 2001, p. A1, internet, <http://infoweb5.newsbank.com>, accessed 1 May 2001.

20. Notably, the document admitted that there are no military solutions to the problems in Macedonia and that any solution should be based on the "domestic political process intermediated by [sic] USA and EU." The document also focuses on three demands: rehabilitation and complete reintegration into society of NLA members, reconstruction of villages and family economies destroyed during the 2001 conflict, and allowing those citizens fulfilling their military (conscrip) obligation to serve in their birth municipalities.

21. Although their usage is problematic, the terms "ethnic Macedonians," "Slavs," and "Macedonians" are used interchangeably in the literature. This usage and understanding are indicative of the ill ease that exists

in terms of ethnic identity within Macedonia, and we note that these terms will remain markers of difference as long as the synecdoche of "Macedonian" prevails over the sense that both Albanians and Slavs might reasonably associate with this identity.

22. Babuna, pp. 80-81. To be accurate, we should acknowledge that the PDP represents both ethnic Albanian and Turkish constituencies.

23. Loring M. Danforth, *The Macedonian Conflict: Ethnic Nationalism in a Transnational World* (Princeton: Princeton Univ. Press, 1995), pp. 142-43. Admittedly, the Ohrid Framework Agreement addressed this perceived inequity and the Macedonian parliament voted on 16 November 2001 to adopt 15 equal rights amendments to the constitution.

24. Macedonian Constitution, internet, [http://www.uni-wuerzburg.de/law/mk00000\\_.html](http://www.uni-wuerzburg.de/law/mk00000_.html), accessed 18 April 2001.

25. According to the disputed 1994 census, Macedonia's population is just over two million people, with 66.6 percent ethnic Macedonians, 22.7 percent ethnic Albanian, 4 percent Turkish, 2.2 percent Roma, 2.1 percent Serb, and 2.4 percent other minorities. Ethnic Albanians of Macedonia, however, insist that they constitute 40-50 percent of the population. CIA, "Macedonia, The Former Yugoslav Republic of," *World Fact Book 2000*, internet, <http://www.odci.gov/cia/publications/factbook/geos/mk.html>, accessed 2 April 2001. On parallel institutions as a differentiating factor and the Albanian population estimate, see Babuna, pp. 81-82.

26. Ackerman, p. 66.

27. *Ibid.*, pp. 66-67.

28. Brown interview.

29. Ackerman, p. 67.

30. *Ibid.*, p. 94.

31. Alessandra Stanley, "In Macedonia: Balkan Rarity: A Peaceful Mixture of Ethnic Groups, All Looking to the West," *The New York Times*, 29 March 1999, p. A10.

32. Once the compromise name, Former Yugoslav Republic of Macedonia (FYROM), was approved by the UN, the country was finally able to join the International Monetary Fund and attain observer status in the Conference on Security and Cooperation in Europe (CSCE). However, Macedonia suffered both from Greece's embargo and from the UN blockade imposed on Serbia (Macedonia's main trading partner). Six weeks into the Greek blockade, the economic "cost" for Macedonia was \$80 million per month, an estimated 85 percent of its total export income. By 1994, the anti-Yugoslav blockade cost Macedonia \$3 billion. Accounting for the pressures of the 1999 Kosovo crisis, some estimates suggest that Macedonia's lost economic benefits since independence are as high as \$8 billion.

33. Prime Minister Ljubco Georgievski compared the 1999 refugee crisis to the equivalent of 20,000,000 Mexicans crossing the Texas border every day. Georgievski managed to survive the storm, however temporarily. One central goal of his government's policy, nonetheless, seems to have little chance of a reality in the near term: Macedonia's acceptance into NATO membership.

34. Simic, p. 24.

35. John J. Mearsheimer and Stephen Van Evera, "Redraw the Map, Stop the Killing," *The New York Times*, 19 April 1999.

36. Thomas M. Franck, "Tribe, Nation, World: Self-Identification in the Evolving International System," *Ethics and International Affairs*, 11 (1997), 155.

37. *BBC Worldwide Monitoring*, "Macedonia: Stability Pact Coordinator on Prospects for Peace," 19 March 2001, internet, <http://infoweb5.newsbank.com>, accessed 1 May 2001.

38. "Macedonia: Passing Clouds?" *The Economist*, 3-9 March 2001, p. 48. Leonard J. Cohen, "Post-Milosevic Serbia," *Current History*, 100 (March 2001), 100.

39. "Macedonia: Passing Clouds?" p. 49.

40. Admittedly, the road to EU membership is a long one. The pact confers the status of potential EU candidacy to Macedonia, with a transition period of ten years toward full EU membership. For Macedonia, the Stabilization Association Agreement is concrete EU recognition of the nation's political and economic progress, especially in the areas of regional cooperation and respect of fundamental rights. "The EU and Southeastern Europe: On the Road to Europe: First Stabilisation and Association Agreement, Signed on 9 April 2001 with Former Republic of Yugoslavia," Europa, internet, [http://europa.eu.int/comm/external\\_relations/see/news/memo01\\_127.htm](http://europa.eu.int/comm/external_relations/see/news/memo01_127.htm), accessed 25 April 2001. For a review of the applicant process, see "A Survey of EU Enlargement: Europe's Magnetic Attraction," *Economist*, 19-25 May 2001, pp. 3-4.

41. For polling data, see US Department of State, Office of Research, Opinion Analysis, "Public Says Ailing FYROM Economy Needs Trade and Investment for Growth," 4 May 2000, and "Opposition Pulls Ahead in FYROM," 21 April 2000.

42. Carl Bildt, "A Second Chance in the Balkans," *Foreign Affairs*, 80 (January/February 2001), 154.

43. Susan Woodward and Benn Steil. "A European 'New Deal' for the Balkans," *Foreign Affairs*, 78 (November-December 1999), 97-98.

## Commentary & Reply

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### BUILDING HOMELAND DEFENSE IN THE DARK?

#### To the Editor:

Lieutenant Colonel Terrence Kelly makes an interesting case in his article "An Organizational Framework for Homeland Defense" (*Parameters*, Autumn 2001). One of his key points, however, will sadly not be realized. He states that "the prospect of an expanded government intruding on its citizens' rights is of such major importance that it must be addressed in full partnership with the Congress and, to the greatest extent possible, in open forums."

Is it already too late? In the immediate aftermath of the attacks on 11 September, Congress stampeded to pass, with little to no debate or discussion, a number of acts relating to homeland defense. With nary a whimper we now have a Cabinet-level Homeland Defense "Czar" and the executive branch has picked up vaguely defined, so practically huge, powers.

If there is one thing the competing bureaucracies listed in Lieutenant Colonel Kelly's article *don't* want, it is public input and open debate on how to best defend our nation. As with virtually every other aspect of our nation's existence that is tagged with "security," this new fiefdom will be heavy on public relations and short on substantive discussion of its key elements.

As someone with a more than passing knowledge of the history of civil-military relations, I am still rather confused as to just exactly what is going on in Washington. A prominent US Senator states that our nation has "moved beyond declarations of war" and that the War Powers Act is now the law (despite what the Constitution says). The White House announces that it, like its predecessors, does not recognize the War Powers Act but will humor the Congress by going along for now. And then there is the disturbing precedent set during the Gulf War of an executive simply declaring "Article III" and doing as he wishes. (Since the precedent was not challenged in court, an administration can now argue that Congress has "demonstrated acquiescence" and accepted it as *de facto* law). And now we have a new Homeland Defense bureaucracy springing up.

I'm not worried about black helicopters but rather about good old-fashioned confusion and infighting in Washington. Without a well-argued-over plan, one that has support from key constituencies ahead of time, Homeland Defense in any guise is likely to be ugly and ineffective. The billions and billions that are being promised have to come from somewhere, and Lord knows the military side of the house is not going to want to give them up. Already state and local officials here in Texas are clamoring for federal dollars for everything from airport security to school crossing guards (well, not quite yet). And no official I've talked to or read about seems to have even a clue what exactly this new Homeland Defense is, let alone how it interfaces with their authority.

It might also be useful to take a look back at the Winter 1992-93 issue of *Parameters* and Charles Dunlap's article, "The Origins of the American Military

Coup of 2012.” That article was not a prediction, of course, but rather an illustration of several points. Key among them was the drive to nationalize and militarize problems, using the argument of “security” as a rationale for federal and military intrusion into new spheres. In that article, for example, the military had basically taken over aviation and other key infrastructure nodes because security and profit go ill together. We’ve already seen what a quick and easy solution the military was for “The War on Drugs.” Is Homeland Defense (i.e. domestic security) going to be any better?

There has been serious discussion of the issues surrounding Homeland Defense in certain limited circles, but in general there has been no public debate over just how (or by whom) the mission should be approached. Instead, what we are getting is a classic bum’s rush. One can almost be certain that key decisions made in the weeks after 11 September, with little or no discussion or input, will quickly dry like cement into precedents that we will be forced to live with for decades.

Steven J. Forsberg  
Houston, Texas

#### **The Author Replies:**

Mr. Forsberg brings up some interesting and valid points. However, he fails to note that the current organization was stood up in the middle of a national emergency to assist the President in dealing with an immediate crisis involving the safety of the general public and the nation as a whole. That was not the time to wallow in prolonged debate, but rather the time for action. The President did the right thing. But it should also be noted that the current organization for homeland security is almost certainly not the final answer. As organized now, the Homeland Security Office Director has only limited organic authority and in practice relies on the close relationship between the President and Governor Ridge to get things done. This is not a long-term solution. Members of Congress, most notably Senator Lieberman and Representative Thornberry, have proposed legislation that would create a Homeland Security Agency or Department that is answerable to Congress and has a statutory foundation, a budget, and line authority. Hearings on these proposals (and others that might be forthcoming) have not, to my knowledge, yet been scheduled. But the discussion on how to organize has begun. I have high hopes that over the next couple of sessions of Congress we will see the kind of debate that Mr. Forsberg and I desire, and that the final solution will be an organization capable of helping us defend ourselves from threats to our security, and that is answerable to the people’s representatives in the Congress.

The issue of the role of government outlined in my paper, and alluded to by Mr. Forsberg, also bears a quick word. It is true that laws were quickly passed in the wake of the 11 September terror attacks that begin to redefine governmental powers and roles. I believe that they, too, will continue to actively evolve over the next couple of sessions of Congress. But we must recognize that the government, alone, is incapable of defending us against many of these “new” threats, whether posed by terrorists, criminals, hackers, or others who would do us harm. The appropriate metaphor is no longer that of traditional military defense or even police protection. Rather, the more appropriate metaphor is the wagon train in the old

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West. That is, we, collectively, as a people, must participate in our own defense if it is to be effective. We must report suspicious actions to law enforcement; we must ensure that our home computers, particularly if connected to the internet with a broadband connection (e.g. a cable modem or DSL), have a firewall and are secure; and we must reevaluate what it means to be a good citizen. In short, our physical safety and economic prosperity depend on our collective behavior, not just on our governmental institutions.

Of course, these are my personal opinions and observations, and do not necessarily reflect the position of the Bush Administration, the Department of Defense, or the Department of the Army.

Lieutenant Colonel Terrence Kelly

## THE USAWC'S PAST AND FUTURE

### To the Editor:

Congratulations on publishing a superb anniversary edition of *Parameters* (Autumn 2001). Dr. Samuel J. Newland did a wonderful job of writing "A Centennial History of the US Army War College," which provided an insightful historical perspective on the college's 100 years of service to our nation. His work complements nicely the enduring work of Harry Ball, *Of Responsible Command: A History of the U.S. Army War College*.

I especially enjoyed Dr. Newland's characterizations of the college's evolution and its four distinct phases of organizational development. Harry Ball, myself, and Sam see four colleges in existence from 1901 to 2001, the "First," "Second," "Third," and "Fourth" Army War Colleges. Each college evolved to meet both the internal and external factors of change that have guided the school's purpose, mission, vision, goals, curriculum, and programs. The process over time was one of continuity, change, renewal, and growth.

The development of the "Fourth" Army War College is still under way. Its formation started about 1989 with the fall of the Berlin Wall, the end of the Cold War, and the advent of the information age. It is the Army War College of the 21st century, and it's a great school. Any great school has a least nine imperatives that undergird its institutional excellence: highly select, diverse students; highly qualified faculty and staff; highly relevant research and studies; leading-edge curricula and programs; modern facilities and infrastructure; state-of-the-art educational technology; robust resources and support; contributing outreach and service; and a positive, principles-based organizational climate and learning culture.

The "Fourth" Army War College is strong in all of these nine imperatives. That's why it is successful, has a strategic relationship with the Department of Army, and is the Army Chief of Staff's "school." Like Dr. Newland, I believe the defining characteristic of the US Army War College (USAWC) in the 21st century is the fact that it is now a degree-conferring institution and subject to all the benefits that come with institutional self-study, peer review, and external accreditation. I believe, as well, that Collins Hall and its capabilities for experiential learning, such as the Strategic Crisis Exercise (SCE), have also helped propel the college to



new heights of excellence and modernity. The SCE is the finest strategic leader simulation in the armed forces of the United States, and there is nothing comparable in the civilian world. Plus, I give great credit to the deans, faculties, and department chairs for recognizing and integrating Collins Hall capabilities—including its technology, communications, facilities, professional staff, and experiential learning methodologies—into the USAWC curriculum in creative and innovative ways that have significantly elevated the learning power of the traditional and excellent Root Hall seminars. Finally, I would add the distance education and learning capabilities of USAWC as another significant characteristic of this wonderful 21st-century war college. These capabilities have extended the reach of the institution far beyond its bricks and mortar. Further, the methods in development for distant education are truly leading-edge and top quality, benchmarks of the best practices of government, academia, and business or industry.

In sum, the Army War College is a magnificent institution that has all the characteristics of a “learning organization.” It has practiced the notion of “continuous transformation” as it has evolved from its early 20th-century historical roots, provided 100 years of service to the Army and our nation, and prepared for future challenges in the 21st century. Dr. Sam Newland described it well.

Lieutenant General Richard Chilcoat, USA Ret.  
USAWC Commandant, 1994-1997  
College Station, Texas

#### **The Author Replies:**

I greatly appreciate Lieutenant General Chilcoat's compliments and elaboration on my article. While he was Commandant, General Chilcoat initiated many of the key innovations which have been instrumental in the development of the “Fourth” Army War College. It was General Chilcoat who announced the intent of the institution to seek the approval of the US Department of Education to become a degree-granting institution and then to proceed to the next step, regional accreditation. It was also General Chilcoat who began the initiative to move the old Corresponding Studies Course from a largely mail- and paper-oriented course to one that takes advantage of the latest technologies available to educators, providing students with an on-line, internet-based course.

The impetus provided through his initiatives and leadership while he was Commandant—particularly seeking accreditation as a degree-granting institution—sparked the transition of the Army War College from being just the final rung of the Army's educational ladder to an institution that is both the Army's premier educational setting and a first-class, graduate-level school. Through this transition the Army War College has moved, as he states, from being a “bricks and mortar” institution to one that through its faculty, residence educational programs, and distance education program offers the Army, its reserve components, and its sister services the best education in strategic land power available anywhere in the world. Finally, every indication is that the transition of the US Army War College continues, that it will remain responsive in adapting to meet the needs of the Army and the nation.

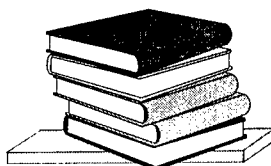
Samuel J. Newland

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## Editor's Shelf

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In a literary world filled with emotionalism and hyperbole, there are a few guiding stars. RAND Corporation is such a celestial body. RAND continues its excellent work in support of the defense establishment through the publication of a series of studies and reports on issues critical to national defense and the security of the nation.



*NATO's Air War for Kosovo: A Strategic and Operational Assessment*, by RAND researcher Benjamin S. Lambeth, provides one of the most comprehensive reviews to date of Operation Allied Force. As advertised, the study focuses on the air war's strategic and operational objectives. However, Lambeth goes beyond the traditional perspectives to provide the reader with an understanding that although Yugoslavian President Slobodan Milosevic may have capitulated following 78 days of bombing, that result in no way should be interpreted as an unqualified endorsement of the use of air power to resolve regional conflicts. In fact, Lambeth characterizes the use of air power during the operation as "suboptimal."

The author asserts that the principal problems restricting the operation's ultimate success were uncooperative weather, an underestimated opponent, and a lack of will on the part of NATO planners and their supporting officials to strike "high-risk" targets (those with possible civilian casualties or the loss of crews). The fact that this report was prepared as part of RAND's continuing "Project Air Force," speaks volumes about the seriousness of the strategic and operational deficiencies inherent in the campaign. These deficiencies were then magnified by such inadvertent acts as the bombing of the Chinese embassy in Belgrade.

The greatest value of this work lies in Lambeth's examination of political and strategic perspectives that may be of use to policymakers conducting such operations in the future. In his concluding chapter, "NATO's Air War in Perspective," the author captures the opinions of a host of experts with the catch-all comment, "just because it came out reasonably well, at least in the eyes of the Administration [and nation], does not mean it was conducted properly." Lambeth leaves little doubt that one should not infer from Operation Allied Force that air power can now "win wars alone." Rather, the real lessons learned from the campaign are to be found at the strategic level, in the ability of the alliance to operate as a combatant command, and in how to avoid such post-conflict critiques as "a military success and a political failure."

A recent study from RAND's Arroyo Center for the Army's Deputy Chief for Intelligence, *The Emergence of Peer Competitors: A Framework for Analysis* by Thomas S. Szayna et al., is intended for intelligence analysts in the hope of providing a framework for thinking systematically about possible peer competitors. Although published for the intelligence community, the study will certainly tweak the interests of the academic and defense establishments, as well as anyone involved in long-range assessments of America's future.

The framework is based on the interaction between the strategies available to a "proto-peer" (a state that is not yet a peer but has the potential to be one) and those of the hegemon. Using exploratory modeling techniques, the possible interactions between

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For details on publishers and prices of books mentioned, see "Off the Press" in this issue or call *Parameters* at 717-245-4943 (e-mail: [Parameters@awc.carlisle.army.mil](mailto:Parameters@awc.carlisle.army.mil)).

the proto-peer and hegemon are depicted in a manner that highlights specific actions which may lead to rivalries between the parties. However, beyond all the matrixes and decision calculus, serious students of political science, international relations, national security, and military strategy will find this work of great value. Chapters 3 and 4 present a comprehensive and instructive analysis of what constitutes a peer competitor and the response a hegemon would have to any perceived threats. This small book should be a part of the library of any student of the military art, if for no reason other than the excellent appendices and bibliography. Whether one agrees with the author's methodologies or not, the book provides a succinct and structured way of thinking about America's future.

Many new institutes and centers are entering the publishing arena. One such organization is the Center for Advanced Concepts and Technology, a self-defined "skunk works" providing an outlet for interests within the Department of Defense. With funding from the Command, Control, and Research Program (CCRP) under the auspices of the Assistant Secretary of Defense (C3I), the center has made a most valuable contribution to the study of modern warfare with its publication of *Understanding Information Age Warfare* by Dr. David S. Alberts et al. The book captures the thoughts and insights of a working group dedicated to examining and understanding information superiority and network-centric warfare. Members of the group come from almost every sector of defense and industry.

The authors postulate that the role of militaries as they relate to national security and the manner in which they will be equipped and organized must transform if we are to be victorious in the Information Age. The book presents an alternative to the linear and deterministic planning strategies that dominated military planning in the past. In direct and irrefutable language, the authors tell us the time has come to pause and reassess the way the Department of Defense invests in, acquires, equips, and trains its forces. The authors warn that the dynamics of the Information Age will punish those who fail to adapt.

Another organization championing the peaceful resolution of international conflict is the United States Institute of Peace (USIP). An independent institute established by Congress, it recently published John Darby's latest effort, *The Effects of Violence on Peace Processes*. This book is a concise and relevant examination of five cases involving the relationship between peace and violence—Northern Ireland, South Africa, Sri Lanka, Israel-Palestine, and the Basque country. In his examination Darby identifies four specific categories of violence, then analyzes the effects and outcomes of each in the five cases. The author defines policy implications for the future and outlines how "guardians" of the peace process can defeat those who challenge them, thereby breaking the cycle of violence. This is a book for scholars and policymakers alike.

A second USIP offering, *A Strategy for Stable Peace: Toward a Euroatlantic Security Community* by James Goodby, Petrus Buwalda, and Dmitri Trenin, examines the prospects for a valid and lasting peace among the United States, Russia, and Europe. These three distinguished diplomats, drawing on their extensive experience and regional expertise, present a strategy for a stable peace acceptable to all nations. They provide a gutsy analysis of the major issues—the antiballistic missile treaty, NATO enlargement, economic costs, human rights, global terrorism, and the European Union, to name just a few. The authors present more than 40 policy recommendations designed to shape future US, Russian, and European relationships. *A Strategy for Stable Peace* is a valuable resource for policymakers and students of international relations. — RHT □

## Review Essay

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### War and Its Aftermath: New Writing on Latin America

RUSSELL W. RAMSEY

This cluster of books on Latin America deals with war, civil-military relations, and the social aftermath of conflict. The works are literarily important, strategically significant, uneven in scope, and likely to enjoy an enduring place in library collections.

We jump quickly into the ideological frying pan with John Charles Chasteen's new work, *Born in Blood and Fire: A History of Latin America*. In short and superbly written chapters, Professor Chasteen profiles a survey sketch of Latin American history which emphasizes both military and social conflict in each major period. The focus gives the reader an unbalanced overall view, since cultural history and civil society get little space. Author Chasteen's outlook is also distinctly at odds with well-documented facts revealing Latin America to be the world region historically possessing the fewest casualties due to war, the fewest soldiers as a percent of the population, and the smallest percent of the gross domestic product devoted to military spending (see Ruth L. Sivard's *World Military and Social Expenditures*, 1991, pp. 22-23; 50-51).

Professor Patricio Silva has edited *The Soldier and the State in South America: Essays in Civil-Military Relations*, the title deriving from Professor Samuel P. Huntington's 1957 classic on civil-military relations. Professor Silva's book fills the gap between the definitive writing on this topic by Professor Lyle N. McAlister in the 1960s and the present day. The essays deal with Argentina, Brazil, Chile, and Peru and are descriptively valuable, but not structurally definitive. Professor Paul Cammack's contribution characterizes these Latin American countries as "state-managed democracies," with the armed forces being increasingly less praetorian, yet retaining social roles not fully consistent with the posse comitatus model. Complementing this book is the Fall 2000 issue of the *Journal of Interamerican Studies and World Affairs*. The essays in that issue cover civil-military relations in Argentina, Brazil, Chile, and Venezuela. They show an expansion of civil society, a growth in constitutionalism, and occasional forays into military populism.

Manual G. and Cynthia M. Gonzales have written *En Aquel Entonces*, which translates loosely as "Way Back Then." They depict the post-conflict conditions under which Mexican citizens lived during the transition into immigration to the United States, or to living in proximity to the United States. They capture unforgettably the racially negative stereotypes which North Americans have usually held about Mexicans, a racism best understood as the "Black Legend." Shifting from the world's most populous Spanish-speaking country to the overwhelmingly dominant Portuguese-speaking nation, we examine Professor R. S. Rose's *One of the Forgotten Things: Getulio Vargas and*

*Brazilian Social Control, 1930-1954.* For a period of time in the late 1930s, Vargas was evidently more akin to Adolph Hitler than to the benign autocrat the distinguished liberal Brazilian historian Gilberto Freyre has portrayed him to be. This book offers intimate detail on the centralization of power from the state capitals to the national capital then located in Rio de Janeiro, supported with sickening accounts of torture administered to alleged communists in select prisons. The author shows how vicious struggles between the political right and the left of that era somewhat resembled events in the streets of Rome and Berlin a decade earlier. The author does not implicate the Brazilian armed forces, but rather identifies terroristic police entities resembling the German Gestapo.

Bradley L. Coleman has written "The Colombian-American Alliance: Colombia's Contribution to U.S.-Led Multilateral Military Efforts, 1938-1953," in which he portrays the United States and Colombian armed forces as senior and junior partners in a cooperative military partnership which effectively boosts the national security goals of both countries, including the strengthening of democracy. Dennis Rempe has authored "Counterinsurgency in Colombia: A U.S. National Security Perspective, 1958-1966," showing convincingly that the transmission of the oft-controversial US version of counterinsurgency doctrine in the John F. Kennedy era was a humane and effective tool of democracy and stability when applied by the Colombian armed forces. This is critically important, for the so-called Revolutionary Armed Forces of Colombia (FARC) have invested in a multimillion-dollar program to promote the myth that they are innocent social reformers when their chief products are, in fact, murder, social mayhem, and illegal narcotics (see the *Columbus Ledger-Enquirer*, 14 October 2001, p. A-12). Professors Gonzalo Sanchez and Donny Meertens have just published *Bandits, Peasants, and Politics: The Case of La Violencia in Colombia*. These authors build upon my own earlier works, studies by Professor Eric Hobsbawm, and Colombian Professor German Guzman's field interviews to create a social portrait of Colombia's socially rebellious rural sector. The detail is exacting and valuable, but there is little commentary on the somewhat skewed connections these people have with Colombia's national institutions. Finally, Professor Charles Berquist et al. have edited *Violence in Colombia, 1990-2000*. This book, in its original Spanish form, is influential in the current Colombian policy of negotiating with the FARC, although that arrangement may soon end. It covers Colombia's tempestuous rural violence in the most recent decade with great detail and precision; its biggest limitation is its minimal commentary on the armed forces and police, which are obviously vital in any serious discussion of rural violence in Colombia.

Emerging civil-military relations in Latin America are a key element in the region's democratization, and in the success of neo-liberal economics in a region that resisted free-market economics for many years due to its Hispano-Catholic colonial heritage. No discussion of civil society, as pioneered so vitally by the late Professor Seymour Martin Lipset, is complete without it. These books relating to conflict and the social consequences of its aftermath open important windows into civil-military relations in Latin America. They are recommended reading.

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## Book Reviews

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**April 1865: The Month That Saved America.** By Jay Winik. New York: HarperCollins, 2001. 461 pages. \$32.50. **Reviewed by Russell F. Weigley**, author of *A Great Civil War* and Distinguished University Professor Emeritus in the Center for the Study of Force and Diplomacy, Temple University.

Jay Winik skillfully employs all the insights he has gained as a governmental, journalistic, and scholarly observer of modern crises of civil war and disorder to write dramatically about the closing events of the American Civil War. *April 1865* will grip the reader's attention with a series of expertly detailed set-piece depictions of the most critical moments among those events: the fears and pathos of the Confederate evacuation of Richmond, the quick transition to a mood of rejoicing among the city's African Americans as Abraham Lincoln himself walked among them, another rapid transition to a night of horror when John Wilkes Booth shot Lincoln down, and Vice-President Andrew Johnson and Secretary of State William H. Seward escaping assassination, Seward surviving only with terrible wounds. Winik adds well-drawn biographical and character sketches of the principal actors. For the military reader he also offers crisp narratives of the final campaigns, not only in Virginia but wherever the war still smoldered on, and challenging appraisals of generalship.

For all the pleasures that its best features offer, nevertheless, *April 1865* is a deeply disappointing book. Winik was not satisfied to allow the considerable drama inherent in the climactic events of the Civil War to speak for itself. Instead, he succumbed to one of the most troublesome temptations of the writer of popular history, to convert every semblance of a turning point in the course of events into a full-blown crisis on which he can claim the whole future of the United States depended. The book is emotionally overwrought.

The thesis is summed up by the subtitle, *The Month That Saved America*. "April 1865," Winik says, "is a month that could have unraveled the American nation. Instead it saved it." This reviewer simply cannot accept such a judgment. With Abraham Lincoln and his party safely reelected, and his Republican Party firmly in power in Washington even if an alternative course of history had also included his assassination, there was no way in which the badly defeated Confederacy could have held out for another four years in hopes of the arrival of a more friendly Union government, not even by Winik's favorite scenario of guerrilla war. Even if one does not accept this reviewer's doubts about the Confederate will to win in the first place, by April 1865 the Confederacy was beaten. Winik makes much of the idea of historical contingency, that history unfolds in an open process because subsequent events are always contingent upon how any one critical incident turns out. But history is not that open. The Confederacy was probably foredoomed at its birth. It was certainly beyond hope by April 1865.

And there was little possibility that its demise might have been accompanied by a larger chaos encompassing the North as well, however much Winik tries to frighten us with such a prospect. Throughout his book he continually makes every flaw in the American fabric of self-government seem as stark and threatening as possible. He leads up to his portrayal of April 1865 as a time of possibilities for chaos by reciting all the

tremors that had wracked the American Republic at one time or another since the Revolution—the Whiskey Rebellion, the Virginia and Kentucky Resolves, the nullification uproar, and all the rest. Significantly, however, he has nothing to say about the election of 1800, the truly critical moment for American self-government, when the Federalists, having lost to the Jeffersonian Republicans whom they loathed, despised, and thoroughly distrusted, nevertheless acquiesced and allowed a peaceful transition of power. That event, based moreover on the long tradition of peaceful political change drawn by America from England, was much more the defining moment of American political history than any of Winik's litany of political flaws, and its profound reach forward into subsequent American history assured that even the Civil War would end pretty much as it did and not in the protracted convulsions that Winik enjoys reminding us he has seen with his own eyes in the Balkans and Third World countries. The election of 1800 established compromise as the essence of the American political genius. Slavery became an issue so intractable as not to be susceptible to compromise. Once the South became reconciled to the end of slavery, as even Winik acknowledges had largely happened by 1865, then the genius for compromise reasserted itself.

Unfortunately, dubious judgments extend also into Winik's military history. He uses the earlier prowess of the Army of Northern Virginia to imply that a real chance for success still attended General Robert E. Lee's assault on Fort Stedman on 25 March 1865, or the defense of Five Forks on 1 April. He conjures up phantoms of prolonged Southern resistance out of the always remote possibility that the remnants of Lee's Army of Northern Virginia might have linked up with the similar shards of General Joseph E. Johnston's Army of Tennessee. He treats us to disquisitions on guerrilla warfare to shake us into believing that the prospect of extended Southern resistance in that vein was real, in spite of the disapproval of Lee and Johnston that he acknowledges, and without reckoning what the role of Southern African Americans would have been.

Regarding Lee, the opponent of guerrilla warfare, Winik offers the remarkable conclusion: "Nor was he cruel enough. In contrast to a Sherman or a Sheridan he refused to burn or plunder, or engage in selective assassination." Presumably it was because William Tecumseh Sherman in contrast was cruel enough that Sherman was "the first truly modern strategist in history." Where do such judgments leave Ulysses S. Grant, the true master strategist of the war, but not a plunderer or an assassin? What indeed are we to make of Jay Winik's apparent calls for cruelty and assassination as favored ingredients of war?

What finally can we make of them, except to repeat that, alas, this in some ways appealing book is too overwrought to be good history, or to offer sound guidance to the military professional.

**Yanks: The Epic Story of the American Army in World War I.** By John S. D. Eisenhower, with Joanne Thompson Eisenhower. New York: The Free Press, 2001. 353 pages. \$35.00. **Reviewed by Lieutenant General Richard G. Trefry, USA Ret.,** Inspector General of the Army, 1978-83, and Military Assistant to the President, 1989-92.

This latest offering by acclaimed historian John S. D. Eisenhower, with his wife Joanne Thompson Eisenhower, is a notable contribution to the increasing interest in World War I. Although World War I has had literally thousands of books written about it, relatively few are available at the present time, even in libraries, and even



fewer have been read by present generations. This book provides readers and historians with a wealth of information logically presented with scholarship and integrity.

The purpose of the book, in the words of the author, "is to strike a balance, to examine how the American Expeditionary Force came about; to describe the gargantuan efforts needed to create it, supply it, train it, and fight it; and in so doing to show how the modern Army was born."

The book is divided into three main parts. Book One is entitled "Creating the AEF." It develops the international scene that found a small US Army on the Mexican border pursuing Pancho Villa, augmented by a militia force. The Army that fought on the border was woefully unprepared for participation in a struggle as colossal as the one ongoing in Europe. The story of how America entered World War I is succinctly presented. Of particular interest is the genesis both here and in France of the American Expeditionary Force.

The selection of General Pershing and the Army politics of the time make for a fascinating story. The trials and tribulations experienced by General Pershing in creating an Army, as well as his problems in relationships with the Allied commanders at home and in Europe, provide lessons for any officer aspiring to high command and staff. Joint and combined operations, coalitions, politics, and statesmanship were but a few of the challenges presented to a comparatively innocent American high command. Of particular interest were Pershing's efforts to establish a logistical base and a training command that would mold the amateur American force into an efficient and sustained fighting machine.

Book Two, entitled "Apprenticeship: The Opening Battles," is a story that closely parallels the problems faced by the Army at the start of World War II and Korea. One cannot help but be reminded that history repeats itself. This book is a primer on the responsibilities and the relationships between the Army Secretariat, the Army Staff, and the forces in the field.

The first fights at Cantigny and Belleau Wood baptized the AEF in the brutal combat of World War I. These experiences translated into the fight for the reduction of the Soissons salient in July and August of 1918, followed by the battles of St. Mihiel in September and the Meuse-Argonne in October and November of that year. Book Three describes these battles in great detail, including the personalities of the leaders who participated. Although the tactics and techniques of combat in those days are not necessarily similar to those of today, they do provide valuable leadership lessons. The employment of combined arms, the tenets of leadership, and the indomitable courage of American soldiers are portrayed in a manner that would be of great benefit to any serious student of the military profession.

The maps in this book are probably the best maps of the battles and campaigns at the operational level that this reviewer has seen. They provide an especially clear understanding of the campaigns and their development during the war.

The American soldier of today, who experienced the wars in Vietnam, Panama, and the Gulf, may find it difficult to understand that the battle tactics and techniques of World War I were patterned on those of our own Civil War that occurred a half century before. Even more revealing is the realization that we started World War II with basically the same arms and equipment that we acquired in World War I.

The gigantic logistics organization that supported American forces during the Cold War also had its genesis in World War I. The Army school system set up by General Pershing in France to serve the leaders of the AEF was moved to the United

States after World War I, and was instrumental in our winning World War II and the Cold War. And the system, with few exceptions, still provides the backbone of professional education and development within the Army.

This book provides the basis for an understanding of where our Army has been, where it currently is, and what it will take to influence the Army of tomorrow. The professional development of the officers and NCOs in today's Army is the legacy of the American Expeditionary Force of 1917 and 1918. This heritage has served us well in the past and has every indication of preserving us in the future. The Eisenhowers have provided a service, particularly for the soldiers of today, by writing an understandable exposition of how the United States became a military power on the world stage.

**After Clausewitz, German Military Thinkers Before the Great War.** By Antulio J. Echevarria II. Lawrence: University Press of Kansas, 2000. 360 pages. \$39.95. **Reviewed by Dr. Williamson Murray,** a senior fellow at the Institute for Defense Analyses in Arlington, Va.

Over the past decade a number of military historians have looked to the period between World War I and World War II as offering significant insights into why some military institutions are able to innovate and transform themselves during periods of considerable technological change, and why some are not. Those historical studies have yielded significant results. And yet there remain problems. As we move into the 21st century, our current interwar period is beginning to look less and less like the 20-year period between the two world wars.

The latter period came after a terrible conflict, which had, nevertheless, pointed the way toward the future. Virtually all of the major revolutions in military affairs that were to mark World War II—combined-arms mechanized warfare, carrier war, amphibious war, strategic bombing, air defense—appeared in World War I. Some of these capabilities were only beginning to emerge, but the initial impetus toward change had already occurred in the last war. Because the second great war came within two decades, most of the military leaders and innovators in the interwar period had experienced combat. And throughout the period innovators for the most part perceived clear and discernible opponents and threats against whom they could work out the changes and transformations that would affect so significantly the coming war.

Our current interwar period, however, is emerging from a relatively minor conflict, the Gulf War, which pitted the coalition forces of the first world against Iraq's rag-tag collection of conscripts, a military force that focused more on protecting the regime and executing dissidents in basements rather than on warfighting skills. The Soviet Union's collapse in the late 1980s left the United States and its military forces with no discernible major opponent against whom it can size, develop, and train its military forces. Our current interwar period could last three or four decades. And the world is going through a major period of revolutionary technological change, with profound implications not only for military forces, but for the supporting social and political framework.

Indeed, the current interwar period is beginning to resemble the interwar period from 1871 to 1914. During those years, European and American societies underwent massive technological change. Electricity, telephones, the internal combustion engine, huge advances in chemistry, and the arrival of powered flight caused revolutionary transformations in societies. The implications for military organizations were equally

profound and disturbing. In fact this period brought together the industrial revolution of the late 18th and 19th centuries with the mass politics of the French Revolution.

Thus, the arrival of Antulio Echevarria's *After Clausewitz, German Military Thinkers before the Great War* is particularly timely. As with all good history, and this is first-class military history, Echevarria suggests patterns of human and organizational behavior that should be of considerable utility in confronting the challenges of the 21st century. The substance of the book addresses how European and American military theorists and pundits (with emphasis on the Germans) addressed the knotty problems raised by the rapid changes in military technology as well as a number of the larger issues raised by the rapid transformation of society and economic power.

The traditional historical view has been that pre-World War I military theorists entirely missed the profound implications of the changes in weaponry that were taking place. Thus, by supposedly missing the exponential increases in firepower that the machine gun and rapid-firing, long-range artillery represented, Europe's military organizations made inevitable the terrible slaughter in the trenches that was to take place between August 1914 and November 1918. Some historians have even depicted Europe's military leaders as actually believing that with sufficient motivation their soldiers would prove impervious to the bullet.

Echevarria presents a quite different picture of what was occurring in the writings and debates that took place between 1872 and 1914. The emphasis on the offensive that so marked military writings reflected a number of complex factors and ambiguities. On one hand, so-called economic and political experts suggested that modern early 20th-century societies and economies were so fragile that they could not sustain either the financial or the political cost of modern war. Thus, a defensive approach to a major war between the powers offered no possibility of strategic success.

On the other hand, there was a general consensus that the offensive was going to prove even more costly than it had during the Franco-Prussian War. As Echevarria suggests:

The spirit of the offensive served as a balance to the era's infatuation with technology, with machines of all types, as evidence of progress and the cure for humanity's ills. A solution to the infantry attack that relied on technology—firepower—alone would ultimately prove too one-dimensional to succeed. Therefore, the spirit of the offensive and the revitalization of the warrior spirit went hand in hand. Each endeavored to create an army with a moral force sufficient to complement the power of modern technology. The emphasis they placed on moral factors and on the importance of the offensive spirit was matched by an equally strong accent on the destructive potential of new technologies and on the newfound strength of the defensive.

By the eve of the First World War, German military theorists had largely worked out the tactical principles that would underlie fire and maneuver and even to a certain extent the problems that would emerge in combined-arms warfare. What then went so catastrophically wrong, when the theorists of war had a considerable grasp of what armies would confront in the coming war? In his conclusion Echevarria presents a depressing picture. In the largest sense, the sheer magnitude of technological changes that had been occurring throughout society made it difficult for theorists to understand the full implications of what was occurring: "The rate of technological change itself exceeded anything Western society had hitherto experienced. . . . Few, if any, of these changes took place in an autonomous, linear, or predictable manner."

Part of the difficulty was a matter of scale. It was one matter to work out the problems involved in coordinating the indirect fire of a battery of guns against a small number of targets. It was another matter to coordinate thousands of guns against thousands of targets, as was to occur by 1916. Similarly the principles of fire and maneuver for a platoon could be worked with relative ease. The problems involved in coordinating fire and maneuver for a division or a corps were a whole order of magnitude more complex.

But it was more than just the rate of technological exchange that explains the extent of the failure. Unfortunately, while the field manuals and the debates in the journals presented a considerable grasp as to the possible impact of the new weapons on the conduct of war in the early 20th century, the great majority of officers were delighted to concentrate on the more serious aspects of the military profession: inspections, bureaucratic minutia, polishing brass, unrealistic maneuvers, speculation about their career prospects.

A very few were ready for the war. The German Army's 43d Infantry Brigade attacked into the teeth of Russian defenses on 9 September 1914. By skillful use of artillery, open order, and the utilization of fire and maneuver, the brigade suffered less than two percent casualties in taking the Russian positions. On the other hand, most of the brigades that fought in the armies assaulted in massed formations, ignored the lessons of the recent past, paid no attention to the scribblings of theorists or even to what was in the field manuals, and suffered catastrophic casualties. The sheer unpreparedness of officers at every rank was a major contributor to the catastrophe.

Echevarria notes grimly in his concluding paragraph:

[The comments of a number of observers] that most young soldiers were "utterly disinterested in military theory" seems to ring true. The "reckless spirit of the offensive" that was practiced in 1914 was, in fact, embraced largely by young officers with little or no combat experience who chose to ignore the admonitions in the various training regulations and other military literature regarding the importance of reconnaissance and preparation. On the whole, military theorists of the turn of the century, though not without their faults and shortcomings, appear to have been exceptional in many ways. No more than a few score existed in each army, and they were more reflective and usually more well read than their colleagues. However, such attributes could work against them in a culture that placed more value on action than deliberation.

As we stand at the start of a new century, almost 100 years later, we would do well to pay attention to the bottom line of Echevarria's splendid examination of military thinking before World War I: "The military profession is not only the most demanding physically of all the professions, it is also the most demanding intellectually." As one watches the innumerable contentless briefings and papers that the current US military gins out every day, this is a lesson we appear to be in danger of forgetting.

**Empire and Revolution: The United States and the Third World since 1945.** Edited by Peter L. Hahn and Mary Ann Heiss. Columbus: Ohio State University Press, 2001. 312 pages. \$22.95 (paper). **Reviewed by William P. Kiehl**, Diplomat in Residence, Center for Strategic Leadership and Senior Fellow, US Army Peacekeeping Institute, US Army War College.

In the decade following the Cold War, it has become commonplace among many American intellectuals and in much of the scholarship on American foreign policy

to focus on the extreme anti-communism of US leaders in the 1950s and early 1960s, and to ascribe to this anti-communistic motivation all acts great and small by the United States, especially in the so-called "third world." This volume, edited by Peter L. Hahn and Mary Ann Heiss, brings together ten rather diverse essays by authors of different academic backgrounds and succeeds in presenting a richly diverse portrait of US foreign policy toward developing countries during the period of the Cold War. The work also points out the diversity in the quality of scholarship and degree of subtlety exercised in presenting ideologically-influenced scholarly work.

Many of the authors draw upon a rich lode of primary source material recently declassified and made available to the public through the State Department's *Foreign Relations of the United States* series, the presidential papers of Presidents Truman and Eisenhower, and the private and public papers of other actors on the public stage at the time. The careful footnoting and scrupulous quotations can bring an air of authenticity and credibility to the degree that readers may not notice the use of language to convey impressions not necessarily supported by fact. Consider one such curious use of an adverb. In writing of the murders of an American aviator and a Spanish scholar at Columbia University, allegedly by Dominican dictator Trujillo's henchmen, Stephen Rabe notes, "Responding to public outrage, the State Department *reluctantly* investigated the murders" (italics added). Why reluctantly? We are given no proof, only the author's supposition that "the administration wanted amicable relations with a dictator." The same author betrays a lack of basic understanding of how diplomacy and intelligence work in the field when he labels a US Deputy Chief of Mission (DCM) as a later Consul General and the "de facto CIA chief of station." A diplomatic historian should know that DCMs are not demoted to Consul General, nor are they running intelligence operations for the CIA.

Two other essays delve into the murky territory of gender politics in attempting to explore new ground. Coeditor Heiss and Andrew J. Rotter, in separate essays, posit that American policymakers were nothing more than a group of middle-aged white guys in suits who had very definite ideas about what constituted "manhood" and based US foreign policy on their perceptions of how foreign leaders measured up to this standard. In this bog of political correctness, neither was able to keep his or her head above water.

Other essays in the volume, however, are more traditional accounts of foreign policy and diplomacy. They examine policymakers in Washington, practitioners in the field, and the many other actors in the drama of international affairs without putting them through an ideological or gender-based screening. One advantage to this hodgepodge of diversity is that several of the articles, particularly those with economics as a sub-theme, stand out in positive contrast. Nick Cullather's article on Taiwan's industrial "miracle" and Darlene Rivas's piece on Nelson Rockefeller's involvement in Venezuela in the postwar period were welcome reading, although one has to slog through to the end to meet up with them.

The period of the Cold War and the United States' complex relationships with countries undergoing development, whether in Latin America, South Asia, or the Far East, are important chapters in the history of American diplomacy. They are too important to be trivialized by what appears to be—on the part of some authors—ideologically biased scholarship or personal fixations with gender. Even the title, *Empire and Revolution: The United States and the Third World since 1945*, carries this heavy-handed baggage.

**How Effective Is Strategic Bombing? Lessons Learned from World War II to Kosovo.** By Gian P. Gentile. New York: New York University Press, 2001. 280 pages. \$36.00. **Reviewed by Colonel Douglas P. Yurovich, USMC,** Deputy Director, Marine Aviation Plans, Programs, and Budgets, Headquarters USMC, the Pentagon.

Does one airplane, one bomb, one target represent strategic air power or tactical employment of aviation? One could argue that the *Enola Gay* with its atomic payload had a strategic effect. An F-16 Viper with a conventional 500-pound bomb “plinking” a tank on the plain of Kosovo is not an example of strategic air power, but rather tactical bombing. Ask yourself what you expect of strategic bombing, or more specifically, what is strategic bombing? Today the term strategic bombing is seemingly used as a reference for anything that flies in conflict. Get your frame of reference, and then read this book. *How Effective is Strategic Bombing* is a thought-provoking analysis on the subject of air power and bombing and the use of surveys to explain the effects of air power on the enemy in conflict.

Gentile, an active-duty Army officer and educated historian, presents a thorough study of the United States Strategic Bombing Survey (USSBS) following World War II and the Gulf War Air Power Survey (GWAPS) after the Gulf War of 1991. The last section of the book takes a quick look at the Kosovo conflict of 1999 and the use of air power in Operation Allied Force.

The airplane and air power had a profound effect on the conduct and outcome of World War II—or did it? The USSBS was commissioned to measure the effect of air power in that conflict. Gentile discusses the politics behind the formation of the charter for the survey and the people responsible for its execution. In the end, the USSBS proved to be an advocate for air power and was used to shape the future rather than to assess the past. Gentile presents the thesis that the USSBS formed the framework of today’s air power doctrine and spawned the need for an independent air force. He concludes that a truly impartial and unbiased report was never a possibility in this case, or in any case, because of the established political agenda for a survey. In reading this book, I could not divorce myself from the thought that the author also had a political agenda in his assessment of air power and the independent air force.

In comparison, the GWAPS did not have so much of a focused political agenda, but represented a shift from air power advocacy to more air power assessment. In the Gulf War, air power was not used as an end unto itself, but rather to bring specific effects to the enemy. Full utilization of air power affects the enemy across the spectrum of conflict, tactically and strategically. Measuring those effects causes difficulty in quantifying them, and in evaluating the true contribution of air power in conflict.

The section on Kosovo and Operation Allied Force, presented in the few pages of the Afterword, was disappointing and lacking. While the historical ink on Kosovo is not yet dry and the analysis is just beginning, more effort could have been spent on the subject. In the end, Gentile calls for another survey to study the effects of air power in Kosovo. That’s a surprising conclusion, since the book establishes that a truly objective survey is not really possible. That is the true lesson learned here. Your professional frame of reference with respect to air power and its effects will establish a professional bias for evaluating post-conflict data.

*How Effective is Strategic Bombing* offers another input into the debate over the contribution of air power as a means of waging war. Philosophically, airmen view

this debate differently than ground officers. For example, Marine air exists to be a supporting asset for the ground combat element—"flying artillery" to many. This view of air power employment is much too restrictive for Air Force doctrine. The Air Force tends to envision the strategic battle being won through superior air power, maybe negating the ground war. The Army, I believe, would love to have the Marines' type of flying artillery, so they would be assured that their tactical targets will be serviced when the time comes. The Army seems unsure, in this day and age, that tactical targets will be serviced by the Air Force, and hence the debate over air power effectiveness rages. This debate harkens back to the USSBS and the formation of the US Air Force.

**America's Overseas Garrisons: The Leasehold Empire.** By Christopher Sandars. New York: Oxford University Press, 2000. 331 pages. \$65.00. **Reviewed by Dr. William J. Gregor**, professor of social sciences at the School of Advanced Military Studies, US Army Command and General Staff College, Ft. Leavenworth, Kansas.

At the end of World War II, the hitherto isolationist and anti-colonial government of the United States possessed an extensive network of military bases around the world. The threat of communism and the diminished capacity of the United Kingdom obliged the United States to abandon its wartime plans for four-power collective security arrangements and to develop a global security system of its own. The history of those military base agreements is the topic of *America's Overseas Garrisons*.

Christopher Sandars, a career civil servant at the British Ministry of Defence, states that it was his purpose to illustrate the varying political environments in which the United States sought to build up elements of the global security system. He also observed that the arrangements by which these bases were obtained were novel, in that US access and use were obtained through negotiations, rather than the exercise of sovereign rights by an imperial power. In this task, he has certainly succeeded. *America's Overseas Garrisons* provides a well-organized discussion of the establishment of US bases prior to the Second World War, arrangements concluded incident to the war, and a region-by-region discussion of bases from the outset of the Cold War to its end.

However, the scope of the project is partially the book's undoing. While the individual chapters are very readable, the larger theme, *The Leasehold Empire*, does not bind the chapters together. The author's focus is firmly fixed on the negotiations for military bases, lease terms, and provisions for base use. His presentation of the host governments' domestic political concerns, the international security situation, and US domestic politics are less detailed and not altogether convincing. The best chapters are those related to his career experiences in the British Ministry of Defence and thus are those chapters dealing with US use of British possessions. Hence, the book is best read as a collection of essays on various basing arrangements.

The larger theme, *The Leasehold Empire*, never comes through. The author's interest in the details of negotiations and the terms of the agreements left him little room to develop his larger theme. When he attempts to tie the details to the larger theme, he frequently relies upon secondary sources to cite the text of speeches, treaties, and diplomatic documents. This practice undermines confidence in his interpretation. When Sandars does finally present his comparison between imperialism and leasehold empires in the final chapter, it is too late. The reader long before decided that distinction was unimportant.

*America's Overseas Garrisons: The Leasehold Empire* provides a reasonably interesting survey of perhaps every basing agreement the United States has entered into since World War II. As such, it is a good starting point for research into the politics of US security arrangements.

**Sherman: A Soldier's Life.** By Lee Kennett. New York: HarperCollins, 2001. 432 pages. \$35.00. **Reviewed by Colonel Len Fullenkamp, USA Ret.,** Professor of Military History, US Army War College.

Lee Kennett's book on the life of William Tecumseh Sherman is brimming with details about Sherman's relationship with his wife, the state of his mental health at various times in his life, his hostility for the press and politicians, his racist attitudes, his self-promotion and manipulation of superiors, and a host of other subjects. About important issues such as the traits and characteristics that made Sherman successful as a general, however, we learn very little. Of Sherman's relationship with Grant, we learn even less.

Kennett gives readers fair warning in his introduction, saying, "With few exceptions I have forsaken traditional campaign history, the direction of battles and the chronicling of campaigns; these matters merit books of their own, and in many cases have them. . . . [M]ore importantly, the man himself has claimed almost all the pages available, and I think rightly so." Many will disagree with that assessment. Those familiar with Sherman are likely to feel that what Kennett has left out is of greater interest than what he has retained.

Kennett's Sherman is a much smaller man than the Sherman one usually finds in the history of the American Civil War. Many students of the war rank William Tecumseh Sherman, along with Robert E. Lee and Ulysses S. Grant, as among the best generals produced by the war. The noted British military theorist and historian Sir Basil Henry Liddell Hart considered Sherman as the first truly modern soldier, both for his sophisticated use of the indirect approach and the way he used military operations to break the will of the Southern people. Yet not all consider Sherman in a favorable light. Even today in many southern states a mention of Sherman's march through Georgia will bring instant and intense condemnation. Whereas Lee and Grant are considered by most biographers to be "good" generals, with Sherman there is a hesitation. This "war on the people thing" still makes people uncomfortable. Perhaps the best one can say is that in this book Kennett attempts to explain what it is about Sherman that makes these people uncomfortable after all these years. To this end he marshals considerable evidence. Unfortunately, by placing so much emphasis on the negative aspects of Sherman's character, there is little room left to comment on his more attractive qualities.

Reading this book one is at a loss as to how to explain Sherman's greatness, least of all his competence as a soldier. What was it that made the team of Grant and Sherman so effective? What did Grant see in Sherman and why did he place so much confidence in him, especially when, as Kennett tells us, Sherman seems to have had so little confidence in himself? Regardless of one's views about Grant as a general, at least he proved to be a good judge of generals, and he considered Sherman one of the best.

In one of the most troubling sections of the book, Kennett turns to a questionable application of psychology to get a better understanding of Sherman's psyche. He refers to the journal *Psychohistory Review*, wherein Sherman was recently diagnosed, long after death, as a "victim of personality disorder, most likely some form of manic



depression." Kennett readily admits that "a posthumous diagnosis of mental illness based largely on epistolary evidence more than a century old is at best tentative," but then concludes, "still, the line of inquiry is a valid one and should be pursued." The most likely diagnosis, we are told, is that Sherman had a "narcissistic personality disorder," and further that "the general's behavior patterns" suggest that he suffered from what today would be characterized as "manic depression." Kennett later uses this diagnosis to dissect Sherman's conduct at various times during the war and in later life. While some may find this line of inquiry and analysis useful and interesting, many others will not.

Setting aside the posthumous diagnosis of mental illness, what the reader really wants to know is this: What is it about Sherman that made him come alive on the battlefield? Grant knew Sherman casually before the war, but during the war they forged a relationship that is remarkable by any account. It is as though lightning struck them on the battlefield at Shiloh and in that instant both men were forever changed by the experience. The trust between them was mutual and deep. In his memoirs, Sherman included a letter to Grant in which he congratulated his friend on being selected as general-in-chief of the Union armies. In this letter Sherman wrote to Grant that he had unqualified confidence in him and "I knew wherever I was [on the battlefield] that you thought of me, and if I got in a tight place you would come—if alive." Kennett makes no mention of this letter. Instead, he puts a different spin on the relationship between the two men. Kennett's Sherman chafes at being under Grant's immediate command and longs for the freedom of an independent command. The biographer acknowledges that Grant's selection for high command is good news for Sherman, but couches it in these words: "The much-touted comradeship and collaboration between Grant and Sherman did have a basis in fact, but it would function best after Grant went East early in 1864 and left Sherman largely his own master in the West."

Kennett's Sherman is not much of a fighter and indeed is a general who seeks to avoid battle wherever and whenever possible. Apparently, what Liddell Hart viewed as a positive trait—the indirect approach—Kennett considers a deficiency. To Kennett, Sherman's infamous "March to the Sea" was actually a series of excuses to avoid direct combat with Southern forces.

The author lightly addresses Sherman's postwar career. He uses the flimsiest of evidence to suggest that Sherman in his later years became something of a lecherous old man who liked to pinch the cheeks of attractive young women, and worse.

Indeed, Kennett's narration of the facts of Sherman's life has a gossipy tone. One gets the impression that all the bad in Sherman's life is captured in this book, while whatever good he accomplished was of too little value to be included. In Kennett's analysis of Sherman's hostility toward the press, he relates the story of a newspaper reporter who explained the bad press Sherman was getting by confiding to him, "I have no feeling against you personally, but you are regarded as the enemy of our set [the media], and we must in self-defense write you down." Perhaps a similar tendency helps to explain this unflattering biography of Sherman. Certainly there are some historians today who are not content to let the reputations of great men rest easy and thus feel compelled to write them down. It would be unfair to suggest that this author was so motivated, so let us focus on the book itself. What may be said in summary is that those who think highly of Sherman will find little in this book to support their views and that others, for whom the name of William Tecumseh Sherman is even today an epithet, will find much here to their liking.

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**Grant.** By Jean Edward Smith. New York: Simon & Schuster, 2001. 706 pages. \$35.00. **Reviewed by Dr. J. Boone Bartholomees, Jr.,** Professor of Military History, US Army War College.

The latest biography of Ulysses S. Grant is an ambitious project by Jean Edward Smith. The author, a longtime political science professor at the University of Toronto now at Marshall University, is best known for his biographies of Chief Justice John Marshall and General Lucius D. Clay. His biography of Grant arrives on the heels of Brooks Simpson's military biography of the general (see review in *Parameters*, Spring 2001). Smith takes a different approach from Simpson in terms of format. *Grant* is a one-volume (albeit necessarily a large one-volume) biography of Grant's personal life, military career, and presidential administration, while Simpson's work is the first of two planned volumes. In another sense, however, the two biographies are remarkably similar. Smith joins Simpson and others in the recent positive reevaluation of Ulysses Grant's career—both military and political. The military reevaluation has been going on for some time. Smith is a leader in interpreting Grant, whose administration habitually lands near the bottom of ranked lists of presidencies, as a successful politician.

The book's strengths are legion. Smith is a skillful storyteller who delivers an engrossing tale about a fascinating individual. The research behind the story is exhaustive—the 39-page bibliography alone is worth the price of the book. Smith somehow persuaded his publisher to include both endnotes and footnotes. The endnotes are primarily scholarly citations of sources, while the footnotes amplify, explain, or illuminate details or side stories. They often are as interesting as the text. Smith handles Grant's military campaigns competently and in as much detail as one can expect. He is equally deft with the political career and manages to adroitly sort out the morass of 19th-century politics. The picture of Ulysses Grant that emerges from Smith's work is one of a very competent, perhaps even brilliant, general and a principled politician who stood up to tough issues. In both aspects of his career Grant faced tremendous challenges.

Smith portrays Grant as "reading from different pages in the military hymnal" than other officers of his day—those pages were hymns of battle rather than occupation of places. Thus, while Henry Halleck and others of his ilk maneuvered cautiously to capture cities and other geographic points, Grant fixed his gaze firmly on the destruction of enemy armies. Only over time did both the validity of Grant's combative approach and his true value as a leader become apparent. That, of course, is a matter of emphasis and interpretation, since three of Grant's most famous victories (Henry-Donelson, Vicksburg, and Appomattox—the result of the siege of Richmond and Petersburg) were the product of location-oriented operations. Nevertheless, Smith is correct about the general's willingness to fight and his belief that victory would result from battles, not the occupation of places. Grant's instructions to George G. Meade for the 1864 campaign that he should make the Army of Northern Virginia his objective and maneuver accordingly best illustrate that attitude.

Smith's positive political evaluation of Grant rests on three pillars: an effective foreign policy, correct positions on important domestic policy issues, and total lack of personal involvement in or blame for the various scandals that rocked his administration. Because Grant did not face dramatic foreign policy challenges, the least significant of these pillars is the foreign policy arena. Smith does, however, point out that Grant's restraint during the Cuban insurrection in 1869 avoided war with Spain or intervention on the island, and his settlement of the *Alabama* reparations issue with Great Britain, expanded beyond the initial issue to include virtually every disagreement between the

two nations, patched up relations with that country. Both represented significant foreign policy victories; the resolution with the British in particular signaled a new and very friendly era in US-British relations.

In the domestic policy arena, Smith lauds Grant's handling of several issues. Thus, we find pronouncements like: "Grant's 1874 veto of the inflation bill is a seminal event in American history." However, the two primary policy issues that Smith proposes as the basis for rehabilitating Grant's political record are his policies toward the American Indian and Reconstruction. Grant believed in the rule of law; he also believed in the humanity and equality of all men. He thus approached Native- and African-American issues with a progressive point of view. He tried to conclude and enforce just treaties with the Indians, and he worked diligently to suppress the Ku Klux Klan. Those efforts, combined with several other issues, outweigh the various political defeats Grant suffered. Finally, Smith explains in some detail the various scandals that beset the Grant Administration. In each case, however, he finds that Grant was personally uninvolved and, more important, that he took correct and honorable action when informed of problems. The tradition of holding leaders responsible for the actions of their subordinates makes this aspect of the reinterpretation of Grant most difficult to accept. Fortunately, I do not believe one needs that argument to prove Smith's basic point—that Ulysses Grant was a more effective President than generally thought.

Let me hasten to point out that this book is not a whitewash. Smith faithfully and in detail discusses Grant's flaws—he does not miss one—but he also does a masterful job of highlighting Grant's talents. Grant was a complex man who lived in challenging times. We may never grasp exactly what made him great. Jean Edward Smith presents his interpretation wonderfully. *Grant* is biography at its best. I highly recommend it.

#### **Identifying Potential Ethnic Conflict: Application of a Process Model.**

Edited by Thomas S. Szayna. Arlington, Va.: RAND Arroyo Center, 2000.

328 pages. \$25.00. **Reviewed by Colonel George F. Oliver, Director, US Army Peacekeeping Institute.**

This is a difficult book to read and comprehend, but the model presented has merit. The best part of this book is its in-depth analysis of four case studies: Yugoslavia, South Africa, Ethiopia, and Saudi Arabia. As the acknowledgements state, the book was commissioned by the US Army's Deputy Chief of Staff for Intelligence and is intended for use by members of the intelligence community to predict the outcome of ethnic conflicts.

In the new world order of the 21st century, internal ethnic conflicts dominate crises around the globe. The authors state that between 1988 and 1998 there were 108 conflicts, yet only seven were interstate wars. With the rise of global communications, global economics, and worldwide interests, it behooves the intelligence community to be able to predict when a crisis will erupt. The authors introduce a model that enables analysts to track and predict ethnic conflicts. The model is quite comprehensive. The criteria, and subsections of each, provide a systematic approach for predicting the outbreak of ethnic violence.

The authors introduce three criteria to determine the outbreak of ethnic conflict. These are: *closure*, the structures within a state and the power struggle between them; *transformation*, identifying the conditions within a nation or region that could cause an eruption into conflict; and, last, the actual *catalysts* that create the outbreak of violence. Simply stated, the model uses three stages to depict the likelihood of conflict (strife): the potential for strife, transformation into likely strife, and the transition from likely to actual strife.

Stage I of the model, closure, refers to the power struggle between various elements within a nation attempting to gain power. These elements include political, economic, and social factors that might contribute to the rise of ethnic tensions. Stage II, transformation, is the most comprehensive part of the model. Its purpose is to determine the incidents or criteria that can transform a region from potential to likely conflict. An analysis of the political balance of power, key leaders, and external influences provides the basis for determining this transformation. The last stage of the analysis is looking for predictors or incidents which will cause a region to transform from likely to actual conflict. This section includes a detailed analysis of the nation's ability to deal with the outbreak of violence.

As mentioned previously, the best part of the book is the four case studies. In two of the case studies, Yugoslavia and South Africa, the authors conduct a historical review of events to prove their model. In the remaining two, Ethiopia and Saudi Arabia, the authors predict the possibility of ethnic conflict becoming a reality. The Yugoslavia case study is one of the most comprehensive I have seen. The South African case is also well done. Those who conduct case-study analyses might find these sections particularly useful.

I did not enjoy reading this book. It is an insightful, scholarly work that provides an excellent methodology for predicting ethnic conflict, but not a book one can read in a leisurely fashion. It is a graduate-level work for students exploring issues in international affairs or for intelligence officers whose job is to make predictions. The true value of this work is its systematic approach to analyzing potential conflicts.

**Military Justice in America: The U.S. Court of Appeals for the Armed Forces, 1775-1980.** By Jonathan Lurie. Lawrence: University Press of Kansas, 2001. 348 pages. \$25.00. **Reviewed by Major Herman Reinhold, USAF,** Judge Advocate General's Office, Fifth Air Force, Yokota Air Base, Japan.

If only real life were as electrifying as the TV show *JAG*. While the lives of real Judge Advocate General (JAG) officers and judges are usually not so stimulating, there is often hidden conflict and drama in the law. Those hidden elements are shown in Jonathan Lurie's book *Military Justice in America: The U.S. Court of Appeals for the Armed Forces, 1775-1980*.

Lurie's foundation is the constant struggle to balance justice and discipline. Those who want commanders to maintain maximum control of their troops with swift punishment battle against the reformers who want to ensure citizen-soldiers receive fair treatment and just punishments, similar to the treatment received in civilian courts. Those supporting the status quo try to protect the commanders to aid them in maintaining good order and discipline, so we can have effective units protecting the nation. The reformers try to make military justice as fair as possible, under the supervision of an appellate court system.

These abstract intellectual struggles do not involve car chases, shootouts, or explosions. Rather, Lurie's history details conflicts that take years and decades to resolve. The individual cases are often key milestones.

Lurie provides a long historical background of courts-martial in America. This is important information about the development of military legal concepts from 1775 until 1951. The historical focus helps the reader understand the impetus for the reforms that lead to the creation of the Uniform Code of Military Justice and the Court of Appeals for the Armed Forces in 1951. Lurie skillfully explains the political influences that created

the UCMJ and the court. The remainder of the book focuses on how the court continued to evolve from its creation until 1980.

This book will appeal to JAG officers, and to other military officers and historians interested in the history of the court and the UCMJ. However, it may also captivate those interested in how changes happen in our government. It shows people working for justice and taking risks, recommending and fighting for changes to the status quo. At the same time, others fought to save a system they felt had helped the United States win all its wars and control the military during peace. The book also illustrates the importance of civilian control of the military in our system of government.

Lurie gives great, detailed information about high-profile cases and the court. The history stretches from the writings of John Adams and Thomas Jefferson to the politics of the My Lai case. Along the way Lurie provides insights into such incidents as Andrew Jackson being held in contempt of court, the court-martial and execution at sea of the son of a Secretary of War, and cases from the Civil War involving military control over civilians.

Those who want to do additional research will find an index and detailed bibliography, but no footnotes or endnotes. For notes, readers will need to get Lurie's earlier books. *Military Justice in America* is a compilation of two previous works: *Arming Military Justice*, and *Pursuing Military Justice*. Those two texts were combined without the footnotes to make this shorter volume.

*Military Justice in America* will appeal to many. It is a well-written and enjoyable book. The timing of its publication is also appropriate. We celebrate 50th wedding anniversaries because they represent a successful union over time. Similarly, the 50th anniversary of the UCMJ and the Court of Appeals for the Armed Forces in 2001 can be said to have marked a successful union of the interests of those supporting strong military discipline and those who support justice and fairness in the military court-martial system.

**Thunder from the East: Portrait of a Rising Asia.** By Nicholas D. Kristof and Sheryl WuDunn. New York: Alfred A. Knopf, 2000. 337 pages. \$27.50. **Reviewed by Dr. Andrew Scobell**, Strategic Studies Institute, US Army War College.

Once again Nicholas Kristof and Sheryl WuDunn, the renowned *New York Times* foreign correspondent husband-wife team, have produced a thought-provoking and highly readable volume on a topic of considerable interest. Kristof and WuDunn's previous collaborative effort resulted in *China Wakes* (Times Books, 1994) which this reviewer also highly commends to readers. This time the intrepid Pulitzer Prize-winning duo tackles a far more daunting challenge—a study of all Asia. Indeed, the authors readily admit that they have attempted an awesome task, and that their approach has limitations. Nevertheless, the book succeeds rather admirably as a lively yet solid introduction to contemporary Asia.

The reader is presented with vivid portraits of countries and individuals. One value of the volume is that it provides a human dimension that is often missing in the writings of inside-the-Beltway national security analysts. While these researchers tend to identify correctly the key Asian trends and skillfully assess their effects and the implications for the United States, they rarely discuss what it all means for ordinary people in the countries concerned. Even regular visitors to the region tend to interact only with their counterparts and taxi drivers in these countries rather than the proverbial man in the street. Kristof and WuDunn, in their quest to bring Asia home to their readers, reach well beyond the subjects most conveniently available to foreign correspondents. They give voice to

an Indonesian rickshaw driver in eastern Java, a Cambodian child prostitute in Phnom Penh, a Japanese gangster in Tokyo, the father of a Thai teenager working in a Bangkok sweatshop. These vignettes are not so much recounted to titillate as they are to reinforce larger points about major issues facing particular countries or the entire region. The authors, for example, skillfully weave together personal stories to illustrate both the severe impact of the Asian financial crisis of 1997-98 and the surprisingly quick recovery that has allowed many inhabitants of the worst-hit countries to get back on their feet, albeit battered and bruised.

Of greatest interest is the final third of the book, focusing on Asia's destiny. The authors do an excellent job of making connections between the past and the present and fleshing out the implications for the future—their time horizon is 40 years out, 2040. While their attempts to depict future scenarios in specific countries strike one as sometimes bordering on the silly, this does not detract from their more carefully thought-out musings on such topics as the future of the Korean peninsula. While Kristof and WuDunn are optimistic about Asia's future in the long run, they are less than sanguine about the serious problems confronting the region now and in the medium term: the scourges of pollution, disease, rampant nationalism, and ethnic conflict.

The authors also touch on military topics. They speculate that "the next world war, if there is one, will almost certainly begin in Asia." And they identify the issues that would most likely lead to conflict between states. Kristof and WuDunn are particularly concerned about the potential for virulent nationalism in triggering conflict between China and Japan or between China and India. Their discussion of the lingering legacy of Japanese expansionism in the early 20th century is particularly well-handled. Especially sobering is their assessment that "a war over Taiwan is one of the greatest threats to security in the Pacific."

The book pays greatest attention to the anthropological and economic dimensions of Asia—topics often underappreciated by the defense intellectual community. Precisely because these aspects are solidly covered in clearly written prose that is mercifully free of jargon, this book is of great value. Chapters 3, 5, and 7 are important for those seeking a clearer understanding of the Asian financial crisis.

This volume is highly recommended, especially for the uninitiated reader daunted by the challenge of coming to grips with such a vast and diverse continent of ever-increasing strategic significance to the United States. While strategists and policy-makers new to the region will find the book an excellent place to start their tutorial, experienced Asia hands will also find much food for thought.

**America's Asian Alliances.** Edited by Robert D. Blackwill and Paul Dibb. Cambridge, Massachusetts: The MIT Press, 2000. 143 pages. \$17.95. **Reviewed by Lieutenant Colonel Debra R. Little**, Director of Asian Studies, US Army War College.

As this generation of leadership seeks to reexamine America's established ties in Asia, this book is a useful tool. Nine distinguished strategists present systematic and concrete prescriptions for strengthening America's Asian alliances. The book is a collaborative effort between Harvard's John F. Kennedy School of Government and the Australian American Leadership Dialogue. It offers an examination of US relations with Japan, Korea, and Australia—each alliance conceived in circumstances of a bygone era—and provides an analysis of the contemporary regional security environment.

Unlike the new and largely peaceful Europe, the Asia-Pacific region is fraught with old instabilities, new risks, and opportunities. America's Asian alliances face an arc of potential instability, from the divided Korean peninsula in Northeast Asia, to the nuclear confrontation between India and Pakistan on the South Asian subcontinent, to an unstable Indonesia in Southeast Asia. The United States and its allies must also address the rise of Chinese power, as well as continue efforts to halt the spread of nuclear and high-tech conventional weapons, maintain access to energy resources, and expand the world's free-trade system.

In the first chapter, Australian Paul Dibb provides a snapshot of Asia's strategic environment. He argues that despite the fashionable view that geography and geopolitics are no longer relevant in the post-Cold War era, Asia retains many of the geopolitical elements of the Cold War. In his assessment of the next five years, he argues that the US alliance system in the Asia-Pacific region needs to adjust to the lack of a clear enemy by developing a "new common security concept." Rather than being threat-based, the alliance emphasis in the Asia-Pacific region needs to focus on shared interests in the maintenance of regional stability.

The second chapter, by Phillip Zelikow, examines the evolution of America's role in Asia, and his argument will undoubtedly be met with cheers from Asia-watchers. He debunks the standard narratives that tend to reinforce the notion that the history of American foreign policy toward Europe equates to the history of American foreign policy for the rest of the world. Zelikow provides a very useful comparison of the distinctive character of US engagement in Asia to its policy toward Europe. He concludes with the warning that the erratic character of US policy toward Asia may carry great risks given the unstable equilibrium in the region.

Australian Stuart Harris and American Richard N. Cooper address the US-Japan alliance using a cost-benefit framework to foreshadow where differences on bilateral or regional issues could develop in traditional areas of tension. The authors address burden sharing, US military bases, defense cooperation guidelines, theater missile defense, economic relations, China policy, Taiwan, the Korean peninsula, Russia, and multilateral activities.

Ralph Cossa and Australian Alan Oxley examine the future of the US-South Korea alliance, looking at both the current security environment and diplomatic initiatives on the Korean peninsula. They recommend alliance policy options that increase the likelihood that the most desired outcomes might be achieved.

Australian John Baker and American Douglas Paal look at the future of the US-Australian alliance in the absence of the Cold War threats that shaped the structure and character of this extremely close relationship. They explain why the alliance has experienced a period of drift and emphasize the need to get the political leadership of both countries focused on their commonalities. The chapter reviews the enduring benefits to both sides of the alliance then highlights the challenges it now faces. They conclude with recommendations that would not only ensure the continuation of the alliance, but also enhance its relevance and utility in the expected strategic environment of the Asia-Pacific region.

In the concluding chapter, Robert D. Blackwill lays out a broad policy agenda for the three alliances and proposes concrete steps to strengthen and build closer coordination in America's alliance system in Asia. Dr. Blackwill effectively reinforces the premise that Asia's many possible alternative futures stand in stark contrast to those of Europe. After outlining the regional threats and opportunities, he makes the argument that

the quality and effectiveness of America's Asian alliances will crucially influence prospects for the region in the next five to ten years.

Blackwill rightly points out that the US system of alliances in Asia has not evolved significantly since the end of the Soviet threat. He provides an excellent assessment of the challenges facing alliance nations and concludes that America's three primary bilateral alliances in Asia should be brought closer together over the next five years to form a more effective security effort on behalf of Asian peace and stability.

These authors are unanimous in seeking to spark an informed policy debate that will serve to remind security practitioners of the values and benefits in preserving, invigorating, and strengthening America's Asian alliances. The book is a relevant, worthwhile read for senior members of the defense community and provides a framework for examining how to prepare these alliances for future challenges in the Asia-Pacific region.

**China, Nuclear Weapons, and Arms Control: A Preliminary Assessment.** By Robert A. Manning, Ronald Montaperto, and Brad Roberts. New York: Council on Foreign Relations Press, 2000. 106 pages. \$10.00 (paper). **Reviewed by Carmel Davis**, Department of Political Science, University of Pennsylvania.

As co-chairs of a panel sponsored by the Council on Foreign Relations, National Defense University, and the Institute for Defense Analysis bringing together academics and government experts, the authors have written a short book aimed at the policy community. The authors contend that China's choices about nuclear weapons may be as important to the United States as Russia's over the next decade because China views itself as a rising power and is sensitive to its perceptions that the United States is attempting to contain it. China is pursuing a strategy of modernizing its forces and may be increasing their size. Chinese doctrine, however, is in flux, and China's interest in arms control is unclear. The authors also argue that these issues are poorly understood in the United States because current expertise on nuclear weapons issues is based on our experience with Russia, while most US experts on China are unfamiliar with nuclear weapons. Additionally, our current experience with nuclear weapons is drawn from the bipolar US-Soviet relationship; as US, Russian, and Chinese arsenals converge, we will be entering the unknown territory of a tripolar relationship. Finally, US national missile defense (NMD) initiatives are a complicating factor.

This is a preliminary assessment, and the authors point to several issues without fully developing them. First, they are generally troubled by Chinese modernization of its ICBM force. However, as they observe, force modernization may be benign. From an American perspective, Chinese forces today are sufficient for minimal deterrence. This is primarily because the United States is easily deterred: We do not want to lose Los Angeles, and we are unlikely to rely on NMD. The United States views itself as a status quo power, and nuclear weapons work well for maintaining the status quo and poorly for changing it. However, the Chinese leadership may have little confidence in China's forces because they lack a secure second-strike capability and quite possibly possess only a limited ability to manage any forces that survive a conventional or nuclear attack. Given these limitations, they may have even less confidence in their capability for intrawar deterrence and still less if the United States builds an NMD system. China's modest modernization for deterrence, particularly of intercontinental forces, may be a solution to Chinese perceptions of a problem rather than something requiring an American response.



Rather than the capability on which the authors focus, what may really be the problem is how China might use it. The ongoing debate about doctrine, especially with regard to the role of nuclear weapons, is a second underdeveloped theme. China developed nuclear weapons for reasons of deterrence and prestige after (perhaps) being subjected to US threats over Korea and the Taiwan Strait in the 1950s. China apparently had little nuclear doctrine until the late 1980s. The doctrine that emerged in the mid-1990s was a concept of limited deterrence that sought countervailing capabilities across the spectrum of possible nuclear conflict, particularly at a regional level, and pre-war and intrawar deterrence. Importantly, a theme running through this book is that the Chinese intend their force modernization both to deter US attempts at nuclear coercion and to coerce others, especially Taiwan. This is profoundly different from American views that nuclear weapons are primarily useful for deterrence.

Unfortunately, this issue is obscured by the authors because they do not sufficiently distinguish their voices from the Chinese in their text. Do the authors believe that nuclear weapons can be used to coerce, or is it only some Chinese? Which Chinese? Why might Taiwan be coerced, and why has deterrence failed? How might Chinese deterrence of the United States and coercion of Taiwan interact with US deterrence of China? These issues are not directly addressed, although some believe they may solve themselves: China may discover that attempts at coercion fail, and China and the United States both may be restrained by mutual deterrence. Indeed, China may find that it, too, is easily deterred inasmuch as nuclear war might be a disaster for the continued rule of the Chinese Communist Party.

A third underdeveloped theme linking forces and doctrine is that of command and control. The authors may be forgiven here because of the difficulty attending this particular issue, but it is critical to understanding the subject. A fourth underdeveloped theme is how others might respond to Chinese modernization and doctrine. There is a real probability that a modernizing force with a doctrine possessing a coercive element may frighten Japan, Korea, Russia, and others, thereby undermining the Chinese aspirations in the region.

Finally, there is a gap between how the authors present the problems they see and their earnest recommendations. These authors at times treat those involved in the US and Chinese policy processes as rational unitary actors, when both are comprised of multiple competing parties that solve problems rather than carefully crafting policies. That said, the authors' advice to work on mutual understanding rather than pursuing a broader agenda is probably reasonable.

This book is a preliminary assessment. One hopes that the authors, having raised important issues, will address them with greater nuance in their final assessment.

**American Patriots: The Story of Blacks in the Military from the Revolution to Desert Storm.** By Gail Buckley. New York: Random House, 2001. 534 pages. \$28.95. **Reviewed by Major Robert Bateman,** Department of History, US Military Academy, West Point, New York.

*American Patriots* is, as the title clearly states, a history of the participation of black Americans in the conflicts of our nation from 1770 to the present. From the outset it ought to be said, however, that Gail Buckley is not a historian. The daughter of the famous singer Lena Horne, Buckley writes with the training and style of a journalist. She has only a weak grasp of the primary source material that is available

on the topic of African-American military service. She does not have the academic training to separate some of the wheat from the chaff. That said, this is a decent book, perhaps even an important book. Professional officers should buy it, not just get it from the library, and they should read the stories Buckley presents. While there are more academically rigorous books on the subject, they are not well known and are difficult to find. *American Patriots* will be a book that influences how we relate to each other regarding race and culture, because it is certain to be widely read.

At first glance this work would appear to be pure history, but it contains little comprehensive narrative, and much of the historical context is lost because the author tends to focus upon individuals. A more accurate title might have been "Stories of Blacks in the Military," as this is what most of the book presents—individual vignettes. However, these vignettes prove to be the strength of the book. Buckley's accuracy steadily increases as the book moves from early America to more recent times. This is partly a function of the fact that there are few useful and reliable primary sources from the Revolutionary War and the War of 1812 that include accounts of African Americans. Yet even the author's material on the Civil War is somewhat dated, incomplete, and does not rest upon the firmest scholarship available. The book would have benefited from the use of some of the more recent work in this emerging field. Over the past ten years alone, numerous solid dissertations on the topic of African-American service in the Civil War have been turned into respectable works with academic and historical value. Buckley seems entirely unfamiliar with such material, and her book suffers for its exclusion. Unfortunately, in the coverage up to the mid-20th century, the author appears to favor good stories over good history. In permitting this, her editor let her down.

More stringent editorial guidance also might have spotted the areas where Buckley relied too heavily on outdated secondary sources, or the passages that appeared to be too good to be true and therefore needed to have some basic facts verified. In some instances it seems that the mythology of a hundred years ago is now being repackaged as history, merely because that mythology is now a century old. A sharp editor catches such things, assigns a fact-checker, and works with a writer to bring out the best product possible.

*American Patriots* does not really come into its own until the chapters reach World War I. From then on, the author is on steadier ground and her material is both more original (few in today's military are aware of the role that race and bigotry played in our Army in the "Great War") and based on more reliable sources. She uncovers a few little-known sources, especially some relating to the service of the 369th and 371st Infantry regiments, two units of the American Expeditionary Force (AEF) that served entirely within the French command structure throughout the war. She also draws the reader's attention to one of the often-omitted facts of this period, the racist command structure of the only all-black American division in the AEF, the 92d Infantry Division. Racial attitudes of the white officers in command of this division (the unit did not truly fight as a division until the last days of the war) almost certainly undercut the unit's combat effectiveness.

Despite the criticisms above, students of military history or sociology need this book. Most soldiers are not historians, and *American Patriots* is full of the inspirational tidbits that help soldiers and leaders develop a sense of heritage. Gail Buckley wrote this with the best of intentions, her writing is clean and unpretentious, and our exposure to these aspects of our common heritage will be useful for Army leaders at every echelon.

**Baptism, A Vietnam Memoir.** By Larry Gwin. New York: Ivy Books, 1999. 353 pages. \$6.99 (paper). **Reviewed by Dr. Henry G. Gole (Colonel, USA Ret.),** a frequent *Parameters* reviewer and contributor.

Larry Gwin has written a stark and lucid account of close combat in Vietnam—and more. His memoir also provides a between-the-lines text that seems to say: even the best among us will suffer deep and permanent psychological damage if subjected to sustained fear, gore, loss of respected comrades, and frequent barely tolerable shocks. The implication is that American military leaders must think through better psychological preparation of our soldiers for war and for the repair of damaged goods before returning combat veterans to society.

Gwin should have been the Recruiting Command's poster boy. He was Hollywood handsome; a super-jock who played football, hockey, and lacrosse; an A-student in high school, before he discovered an inclination to boozing and wenching while attending Yale, where he also served as battalion commander of his Army ROTC detachment. He had vague memories of VJ-Day, and keener memories of shooting his BB gun at little lead soldiers arrayed on a battlefield, watching *Victory at Sea* "religiously," and playing soldier "decked out in army surplus."

The Gwin men served in America's wars: his father in World War II, his grandfather in the Spanish-American War. His great-grandfather was seriously wounded fighting for the Confederacy, and his great-great grandfather, James Gwin, died at the Alamo. It was Larry's turn. He writes:

I was intrigued by [the war in Vietnam's] potential for challenge, the unaddressed question of how I'd measure up in combat—a question that would not have concerned me, I'm sure, if I hadn't been aware of my father's proud service in the "Good War." We are, after all, who we are. So, I signed up.

The gung ho Yale senior signed up in the fall of 1962. On the Officers' Preference Statement he listed the 10th Special Forces Group, the 82d Airborne Division, with Vietnam being his overseas duty of choice. In 1963, after infantry, airborne, and ranger training, Lieutenant Gwin began a two-year stint with the 82d. He made over 40 parachute jumps while serving as a rifle platoon leader, battalion adjutant, and commander of a raider platoon. "I was prepared to jump into the jaws of doom on a moment's notice," he said. When he got his orders for Vietnam, he writes, "I was, believe it or not, quite thrilled."

After the Military Assistance and Training course at Fort Bragg, he studied Vietnamese and fell in love while at the Defense Language Institute in Monterey, California. Later, he caroused in San Francisco before boarding the aircraft that would take him to Vietnam. He listened to Beethoven's Fifth Symphony through the plane's plastic earphones, observing, "What a way to go to war!"

He was US Grade-A prime beef: 23, great bloodlines, a sense of tradition and duty, solid education, and a strong desire to serve. When he landed in Vietnam in July 1965, he was as well prepared as any young man going into battle for the first time. But all that was barely enough to get him through his year in Vietnam. It would not be enough to prepare him to later cope with a sense of being damaged goods, a profoundly confused man for many years after what he was about to experience.

After briefings and orientation in Saigon in July, Gwin was assigned to the 21st ARVN Division at Bac Lieu, in the Mekong Delta. Hearing that it was a quiet place, he said, "I felt gypped." Our memoirist is clearly a hero-in-waiting. In the Delta he fought

wait-a-minute vines, red ants, ARVN apathy, leeches, and the heat. Filthy, he walked the walk, and came under fire, serving the infantry soldier's apprenticeship. Then, with about two months in-country, he was reassigned to "the Cav." His war got serious.

Readers familiar with *We Were Soldiers Once . . . and Young* by Harold G. Moore and Joseph L. Galloway, an account of two battles, the first major encounters of the war between the American and North Vietnamese first teams in the Ia Drang Valley, will recall that the battle at Landing Zone (LZ) X-Ray was a very bloody affair, resulting in victory for a US battalion, but with heavy casualties on both sides. That fight was followed by another, an enemy ambush of 2d Battalion, 7th Cavalry Regiment, 1st Cavalry Division (Airmobile), a relief force, as it walked from X-Ray to LZ Albany. The 2/7 Cavalry came very close to complete annihilation, surviving thanks to air support and brave men fighting mostly in small groups as the enemy searched for and executed isolated or wounded American soldiers. Larry Gwin had been the Executive Officer (XO), the number two man in Alpha Company of the 2/7 Cavalry, for over a month. Nothing in his athletic or martial experience, nor in his creative imagination, had anticipated this. "This couldn't be happening, I thought. It was worse than any nightmare I'd ever dreamed. We were getting the shit kicked out of us!"

In a movie theater, perhaps, the situation would play out, there would be a parade honoring the dead and the brave, the hero would bask in his heroism, clean. Music up, credits, lights on. It's over. But real life in a rifle company isn't that way. It goes on, and on, and on . . .

Including the Ia Drang relief of another battalion at LZ X-Ray, and the ambush en route to LZ Albany, Gwin and A Company would make 45 combat assaults and fight in five major engagements. Alpha Company suffered more than 70 percent casualties. As XO, Gwin organized the chopper loading plans, kept the beans and bullets moving forward, got the wounded out on medevacs, and generally monitored the tactical situation to fill the cracks and do what needed doing. His pride shines through as he admires the guts and tenacity of American soldiers, and his humanity moves him to despair as he sees the young men he loves burned and mutilated. A C-123 aircraft crashes, killing all aboard. Dead Americans were gathered in a row under ponchos, their boots sticking out askew. Shock follows shock. One recalls Lord Moran's observation that courage is like clothing: it wears out.

Larry Gwin is a hero. He is also damaged goods. Few books can transport the reader to the midst of close combat. This well-told story does. And the price is right. Buy it and read it now.

**Prelude to Tragedy: Vietnam, 1960-1965.** Edited by Harvey Neese and John O'Donnell. Annapolis, Md.: Naval Institute Press, 2001. 309 pages. \$32.95. **Reviewed by Dr. Paul F. Braim (Colonel, USA Ret.),** who served four tours in Vietnam.

This book is a collection of the experiences and opinions of five American and three Vietnamese leaders who were involved in nascent counterinsurgency programs of the US and South Vietnamese governments. One of the editors, Harvey Neese, served in Vietnam with the International Voluntary Services, managing agricultural projects; the second editor, John O'Donnell, served as a provincial representative of the Agency for International Development in Vietnam, working in agricultural and rural development. The other three Americans who provided essays, Bert Fraleigh,

"Rufe" Phillips, and George Tanham, had broad and repetitive service in US economic aid programs in Vietnam and throughout Southeast Asia. The three Vietnamese essayists, Hoang Lac, Lu Lan, and Tran Ngoc Chau, were senior officers of the Army of Vietnam (ARVN) who also had political responsibilities. Two of these officers began their military service with the Viet Minh forces of North Vietnam. Most of these contributors are known only to those interested in or affected by the war; however, the foreword is provided by Richard Holbrooke, who has become well known for his recent diplomatic endeavors as a roving ambassador of the United States.

The common theme of the individual stories, and the foreword, is of early success by US and Vietnamese officials in programs for improving the economy and security in rural areas. The authors agree that these programs were distorted and reduced in effectiveness by US authorities who refused to listen to those agents who were in the field and familiar with Asian cultures and the intricacies of counterinsurgency. The rapid and uncontrolled buildup of US assistance programs militarized and Americanized the struggle against the communists, according to the authors. The US military chain of command, from Saigon to Washington, is criticized for building ARVN as a conventional force, unsuited to the demands of counterinsurgency. The Vietnamese authors describe a fragile ARVN leadership, wracked by political favoritism and shifting cabals, and thus unable to act decisively.

US complicity in the coup that overthrew Vietnamese President Diem is highlighted as a major mistake. Bureaucratic infighting also diluted the focus and the effects of the US effort. "This is not a military but a political war," argued Rufe Phillips, "and it's being lost." Bert Fraleigh charged the loss of the war to American leaders, who "through ignorance and arrogance, denied counterinsurgency for South Vietnam."

These criticisms are made by many writers, and they are generally valid. With respect to military assistance, the United States engirded ARVN with vehicles and relatively heavy weapons, thus allowing their Vietnamese counterparts to emphasize fire support in lieu of maneuver and to become ever more bound to movement on roads and major trails. It is a truism that a soldier in any army who is assigned to a vehicle will never walk again.

But the legion of critics should endeavor to empathize with the commanders of the US Military Assistance Advisory Group (MAAG) in Vietnam. They were not fools, nor were they insensitive to the nuances of "winning the hearts and minds of the people." They were, however, faced with the threat of a North Vietnamese invasion of the South, a threat which grew throughout the war, and which became reality on a number of occasions, including the final campaign of the war. It was necessary to build a conventional ARVN in order to meet that threat, as well as to act against guerrilla forces which were increasing in strength and armament, provided by North Vietnam. The communists so increased their attacks that US economic assistance programs were severely limited as the depredations spread.

Admitting the failure of the US counterinsurgency program, one should also recognize that the communists (North and South) did not win the hearts and minds of most of the people of South Vietnam either. A critical component of the communist Tet-68 offensive was to be an uprising of the people against the government of the Republic of Vietnam; this uprising did not occur. Nor did many of the people in the hinterlands of South Vietnam voluntarily support the communists. Some authors have argued that the massive US and South Vietnamese military presence prevented the people from expressing their support for communism. But, to my observation, a great

percentage of the affected population supported the American efforts, and cooperated with their legitimate government, when they felt secure enough to do so.

For all their brash and insensitive mannerisms, the Americans in Vietnam—soldier and civilian—were uniquely kind, and the Vietnamese came to recognize that quality in the American character. Left-leaning intellectuals and pseudo-intellectuals, in the United States and worldwide, sought diligently to find a hidden motive for the American effort in Vietnam, but there was none. The American people came to help; they gave to the struggle the lives of many of their young—their most precious resource. They demanded nothing in return, and they left with promises of aid to all sides in the war.

The early struggle described in this book was “Kennedy’s War.” It was a most noble endeavor by President John Kennedy to build a nation in the image of the United States, free and prosperous, on the frontiers of the communist empire in Asia. The effort was also most naive. We did not know then how to build a nation; we don’t now. But we did learn how not to do so. One cannot build a nation from the outside.

**Combined Arms Warfare in the Twentieth Century.** By Jonathan M. House. Lawrence: University Press of Kansas, 2001. 364 pages. \$45.00 (\$19.95 paper). **Reviewed by Colonel Gregory Fontenot, USA Ret.,** former Commander of the Battle Command Training Program.

Jonathan House’s *Combined Arms Warfare* is a revision of his earlier Research Survey No. 2, *Toward Combined Arms Warfare: A Survey of 20th-Century Tactics, Doctrine, and Organization*, published in 1984 by the Combat Studies Institute at Fort Leavenworth. In this version, House successfully delivers on two promises: first, he has updated his original work to complete the story of combined arms warfare through the end of the century; second, he has written for the general reader rather than for the professional soldier. The result, a consequence of delivering on the second promise, is a far better book. It is cogently argued and tightly written. The author has also eliminated jargon and military euphemisms. The result is a first-class analysis of the trends in combined-arms warfare over the last century, including weapon development, doctrine, and organization.

A thoughtful student of the subject, House concludes with an excellent essay on the future of combined arms. Juxtaposing it against the sections on Desert Storm and Chechnya, he avoids predicting the future, but ably amplifies the tenets of the book. Chiefly, he examines the key trends in combined-arms warfare of the 20th century, including the continued improvement of weapon systems and the move toward “integration” or combining arms at lower levels. He cautions against both rigid structures and the deployment of temporary or task-organized units without adequate training. This apparent contradiction stems from the competing and differing requirements posed by rapidly changing missions, the environment, and the enemy—in the vernacular of the Army, METT-TC (mission, enemy, terrain and weather, troops and support, time available, and civil considerations).

According to House, the issue is to achieve balance and assure sufficient means to exercise command and control. While accepting the possibility that information technology may ease the command and control problems, House is not convinced that information technology alone is the answer. Training and the cohesion that comes from regularly working together are, in his mind, the keys to successful “extemporaneous” combined-arms formations.

The author draws his conclusions by analyzing developments in combined-arms warfare along functional lines, including protection, mobility, offensive power, and

motivation. Doctrine, weapon developments, and organizational design are, in his view, the means to determining the most effective balance among the many functions—some operating in opposition to one another. Mobility, for example, may come at the expense of protection. Developing the right balance between these competing requirements is essential; at a minimum, formations must operate in a doctrinal framework that mitigates risks related to protection in order to achieve greater mobility. Command and control, both technically and tactically, are also essential components of a successful combined-arms organization. The application of the radio to the tank, coupled with the right doctrine, has produced success; when absent, it has prevented combined-arms organizations from achieving their potential. Jonathan House's approach is sound and compelling.

The author devotes considerable effort to discussing the way that combined-arms formations train to operate. Historically, extemporaneous combined-arms organizations that have not trained together have failed. House shows that armor and infantry cooperation are at the heart of the problem. When the tank-infantry team works well together, success is realized. When they have not, as in the first Russian efforts in Chechnya, the results have been uniformly catastrophic. The lesson to be gained here is that, even if weapons, doctrine, and organization are adequate, success still demands effective training.

Jonathan House's work is a good start point or model for force designers and doctrine writers who are planning combined-arms operations in the 21st century. For that matter, his work is also a good start point for developing any requirements for new weapon systems.

**Guide to IGOs, NGOs, and the Military in Peace and Relief Operations.** By Pamela Aall, Daniel Miltenberger, and Thomas G. Weiss. Washington: United States Institute of Peace Press, 2000. 298 pp. \$14.95 (paper). **Reviewed by Melinda Hofstetter**, Washington Liaison for the Center for Disaster Management and Humanitarian Assistance, Tulane University.

The recently published *Guide to IGOs, NGOs, and the Military in Peace and Relief Operations*, by the US Institute of Peace (USIP) and the US Army Peacekeeping Institute, is a well-organized, concise handbook that really could fit into a pocket or backpack in a field operation with no trouble at all—and it is well worth taking along. At 4¼ by 8 inches, it travels easily and is a useful source of historical and current information on the organizations in the title. It is meant as a reference manual, and not necessarily designed to be read from start to finish.

The *Guide* packs a lot of information into less than 300 pages. It has chapters on intergovernmental organizations (IGOs), nongovernmental organizations (NGOs), and the US military, each by a different author. The authors state up front that it is intended as a tool for field operators. The *Guide* introduces the operators to their potential partners in the humanitarian “battlespace” of peace or relief operations, then explains how each will function. There is even an outline of the “Evolution of a UN Peace/Humanitarian Operation: An Illustrative Scenario” that in five pages covers all the phases of action in such operations: who arrives and when, the response, and the progress of the peace/humanitarian situation. One of the *Guide*'s main goals is to help break down the so-called cultural biases that various actors harbor, in an effort to foster communication and cooperation, and perhaps even expedite the mission or mandate of an operation.

The well-known and prolific Thomas G. Weiss, formerly of the Watson Institute for International Studies of Brown University, authors the IGO portion. The section defines an IGO, lays out the history of IGOs, and profiles global and regional IGOs, including addresses and websites. IGOs are also described "in action," that is, how some of the most prominent IGOs function and their responsibilities in an emergency. Not only does this chapter provide a list of the main international players, but it also presents a brief review of the past decade's experience in peacekeeping. Derived directly from Weiss's work in the Humanitarianism and War Project at the Watson Institute, the section describes early and current UN peace operations (as contemporary as East Timor). The chapter ends on a note of philosophical conjecture, wondering if IGOs can actually ever really pull together and form a cohesive coalition. Will they recognize that successful mission completion might mean having to give up some autonomy and striving even harder toward the ever-rejected "C" word—"coordination"?

The NGO chapter, written by Pamela Aall of the USIP, is also an instructive and concisely written offering. It contains a brief history of NGOs, a listing of their objectives, how they may be expected to operate during conflict, and the challenges of coordination with other civilians and the military. It profiles 48 major NGOs. For those coming from organizations with a well-defined hierarchy, NGO lines of authority and their decentralized decisionmaking approach are explained. Aall points out that in a crisis it is much more efficient to maintain flexibility by use of this independent decisionmaking approach, as opposed to the vertical stovepipe of the military's chain of command. Aall specifically writes about NGOs in conflict, illustrating the dilemmas they face in such environments. The chapter includes recommendations for those "changed circumstances NGOs now find themselves dealing with." Training modules, personal security programs, and hired trained protective staffs are some of these changed aspects.

Aall also delves into the tough subject of how NGOs have been forced to think about the unintended consequences of their activities, along with the fundamental principle of "do no harm." The final section of the NGO chapter focuses directly on coordination with other organizations and the military. Differences in tasks between the military and NGOs are highlighted. She points out that collaboration and cooperative action usually works best, if at all, on the ground, at the local level.

Finally, in 68 pages, Lieutenant Colonel Daniel Miltenberger from the US Army Peacekeeping Institute has put together a strictly US-focused military guide. It is a comprehensive collection of charts depicting officer and enlisted rank insignia, as well as silhouettes of various equipment and even a list of common acronyms. The role of each service is detailed, along with a breakdown of their organizations. A section on "Military Thinking and Military Culture" will be useful to those who have had little contact with the military and who may think of service members as little more than right-wing sword-wielders. Values, planning, teamwork, and yes, flexibility are described as military attributes. Miltenberger also candidly points out some of the military's drawbacks, such as frequent rotation of personnel, a tendency to have a short-term perspective on goals and objectives, and so forth. The military section also has a brief chapter on the military side of coordination in civil-military operations.

This is a practical volume for the practitioner that keeps pace with many of the relevant issues, addresses management of the difficulties, and focuses on the crucial issues of cooperation and communication in peacekeeping operations. The *Guide* offers much good information for participants on both sides of the humanitarian and peacekeeping fence.



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## *From the Archives*

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### Military Justice, 1863

**M**military justice systems often must preserve law and order under very difficult circumstances. In former times, punishments were harsh. Those who believe that little has changed should consider the following excerpt from the entry of 23 July 1863 in the diary of Corporal William W. Cluett, a drummer of the 57th Illinois Volunteer Infantry Regiment, part of the garrison of Corinth, a strategic railroad junction and the main Federal stronghold in northeastern Mississippi:

This morning we are ordered on review at 8 o'clock in the large field to the south-east of Corinth, to witness the execution of a deserter named Johnson, from Company A, 1st Alabama Cavalry. At the appointed time the troops are all in line, the sun is intensely hot, and from the movements of the troops it is very dusty; soon the procession, with the unfortunate man, appear at the right of the column, a brass band playing the dead march; then the company of which he was a member; then four men carrying his coffin, the prisoner following, assisted by the Chaplain of the 66th Indiana; and then came the detail of twelve men who were to carry out the sentence of the Court Martial—that he be shot to death—passing along the line of the troops from right to left. The procession then marched to the center of the column, the place of execution. The prisoner was placed upon his coffin in a sitting position, a solemn and impressive prayer was offered by the chaplain after which he was blindfolded; the executioners take their position; the Provost Marshal gave the command and the unhappy man was launched into eternity. May his ignominious death prove a warning to all those who might be tempted to do likewise.

Source: Richard J. Sommers, ed., *Vignettes of Military History, Volume III* (Carlisle Barracks, Pa.: US Army Military History Institute, February 1982), Vignette No. 177, contributed by Lieutenant Colonel Gerald C. Brown, drawn from William W. Cluett, *History of the 57th Regiment, Illinois Volunteer Infantry*.

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